

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10548 of 2023

Applicant :- Sikandar

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lucknow And 3 Others

Counsel for Applicant :- Syed Ahmad Mehdi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by the State is taken on record. The State in its counter affidavit has enclosed the information submitted by the concerned police station with regard to the fact that opposite party No.2 has been served, however, he is not represented.
2. Heard Shri Syed Ahmad Mehdi, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Sikandar** for grant of bail, in Case Crime No. 122/2023, under Sections 363, 366, 376 I.P.C. & Section 5(J)/6 POCSO Act, Police Station- Kotwali Rudauli, District- Ayodhya, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.
5. It is further submitted that the F.I.R of this case has been lodged by the father of the prosecutrix on 22.03.2023 at Police Station- Kotwali Rudauli, District- Ayodhya alleging therein that on 19.03.2023 at about 08.00 PM, his daughter aged about 18 years had left her house and thereafter, is not traceable. However, on the recovery of the prosecutrix, her statement was recorded under Sections 161 and 164 Cr.P.C., wherein she stated her age to be of 19 years and also that she is in love with the applicant and as they are major, they wanted to solemnize marriage, but as they belong to different religions, their family members were not ready for the same and they, in order to solemnize marriage, had gone together in March 2023. It is further stated by her that she had accompanied the applicant

with her free wish and will and she has not been abducted and she wants to live with the applicant.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. has stated her age to be of 19 years and have not imputed any allegation against the applicant and thus, the Investigating Officer without there being any sufficient evidence has submitted the charge sheet.

7. It is further submitted that the age of the prosecutrix as per her educational qualification is 16 years and 10 months while in her statements recorded under Sections 161 and 164 Cr.P.C, she has stated her age to be of 19 years and she refused to undergo any medical examination but has stated her age at the time of the incident as 19 years. Thus, her age written in the school record may not be taken as conclusive, more so, when the informant himself in the F.I.R lodged by him has stated that the prosecutrix at that time was aged about 18 years.

8. It is next submitted that applicant is in jail in this case since 28.05.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix as stated by her in her statements recorded under Sections 161 and 164 Cr.P.C is 19 years. The father of the prosecutrix in the first information report lodged by him has stated that the age of the prosecutrix as 18 years while as per the school record, the age of the prosecutrix appears to be of 16 years and 10 months at the date and time of the alleged incident. Thus, prima facie the age of the prosecutrix is yet to be determined/ adjudicated by the trial Court. Admittedly, the prosecutrix has not leveled any allegation against the applicant and perhaps on the score that the prosecutrix was minor at the time of the incident, the Investigating Officer appears to have submitted charge sheet. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 28.05.2023 without any previous criminal history. The presence of the applicant could be secured before

the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicant- **Sikandar** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

15. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 27.10.2023

Gurpreet Singh