

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10656 of 2023

Applicant :- Arman

Opposite Party :- State Of U.P. Thru. Secy. Home Deptt. Lko. And 3 Others

Counsel for Applicant :- Pawan Kumar Pandey, Rajesh Kumar Agnihotri

Counsel for Opposite Party :- G.A., Amit Kumar Gaur, Rahul Yadav

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the accused-applicant, learned A.G.A. for the State as well as Mr. Amit Kumar Gaur, learned counsel for the opposite party no. 2, and perused the record.

2. This bail application has been moved by the accused/applicant - **Arman** for grant of bail in FIR/Case Crime No.069 of 2023, under Sections 363, 366 and 376 IPC read with Section 5/6 Protection of Children from Sexual Offences Act lodged at Police Station Inhauna, District Amethi, during trial.

3. Learned counsel for the accused-applicant, while pressing the bail application, submits that it is case of false implication. The FIR of the instant case has been lodged by the father of the prosecutrix on 23.05.2023 alleging therein that his daughter has been enticed away by the applicant with the help of co-accused. The prosecutrix was recovered on 01.06.2023 and, her statement was recorded under Section 161 CrPC wherein she did not impute any allegation against the applicant, rather stated that they were known to each other and were intending to marry, but as they belong to different religions, their families were not ready so she accompanied the applicant to Ahmedabad where they resided as husband and wife and, thereafter she returned. It is specifically stated by her that nothing wrong was done by the applicant with her.

4. Highlighting the above, it is vehemently submitted that the prosecutrix/victim in her statement recorded under Section 161 CrPC has not imputed any allegation against the applicant, however, after four days of recording of this statement, the statement of the prosecutrix was recorded under Section 164 CrPC wherein she changed the whole story and imputed that she was abducted by the applicant with the help of another

person and, she was taken to Lucknow and she was given intimidation and, therefore, did not make any alarm and she was taken to different places where she was kept and sexual assault was committed on her. It is vehemently submitted that the statement of the prosecutrix recorded under Section 164 CrPC appears to have been given under the influence of her family members and, even if her statement is taken on its face, she appears to be a consenting party as she did not raise any alarm while travelling to Lucknow and thereafter to Indore with the applicant. It is further submitted that though the prosecutrix was not major on the date and time of the incident but as per her educational credentials she was aged about 17 years and 13 days old and in ossification test her age has been assessed to be 18 years and, thus, she was having sufficient intellect to understand her welfare and nature of the act. It is also submitted that the applicant is languishing in jail in this case since 06.06.2023 and he is not having any previous criminal history and, there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

5. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and consent, if any, is immaterial as the prosecutrix was minor on the date and time of the incident.

6. Perusal of record would reveal that the prosecutrix was 17 years 13 days old at the date and time of the incident as per her educational credentials and about 18 years old as per ossification test, thus, she appears to have sufficient intellect to understand her welfare. In her statement recorded under Section 161 CrPC she did not impute any allegation against the applicant. However, in her statement recorded under Section 164 CrPC, she appears to have alleged abduction and rape to the applicant. The defence of the application appears to be that the prosecutrix though was not major but was having sufficient intellect and she had travelled to many cities with the applicant and theory of abduction is an improvement made while recording of her statement under Section 164 CrPC and that could not be believed in absence of any resistance or raising of alarm by her while travelling with the applicant to different cities. The applicant is languishing in jail in this case since 06.06.2023 without any previous criminal antecedents and, the presence of the applicant may be secured before the trial court by placing adequate conditions.

7. 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**.

8. Let the accused/applicant-**Arman**, 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.

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

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

11. 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 on the merits of the case.

.

[Mohd. Faiz Alam Khan, J.]

Order Date :- 31.10.2023
MVS/-