

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11748 of 2022

Applicant :- Mayank Srivastava Alias Chhotu

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

Counsel for Applicant :- Anil Kumar Mishra, Ajeet Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed by the applicant is taken on record.
2. The State along with its counter affidavit has also enclosed the proof of service of notice of these proceedings to the opposite party no.2. A copy of the same has been placed as CA-7. The C.J.M., Lakhimpur Kheri has also sent a report of date 16.11.2022 informing that the opposite party no. 2 has been served. However, he is not represented.
3. Heard learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Mayank Srivastava alias Chhotu** for grant of bail, in Case Crime No. 683 of 2020, under Sections 363,366,344,376 IPC, Section 3/4 of POCSO Act & Sections 3(2)V/3(2)V-k of the S.C./S.T. Act, Police Station Kotwali, District Lakhimpur Kheri, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
6. It is further submitted that the FIR of this case has been lodged on 9.6.2020 by the father of the prosecutrix/victim alleging therein that his minor daughter had gone to school on 8.6.2020 at 11 am, but thereafter did not return back and her mobile phone was coming switched off. On being recovered, the statements of the prosecutrix/victim were recorded under Sections 161 & 164 CrPC wherein she stated that she was called by the applicant in the lane situated near her house and from there, she was taken by him to Noida where sexual relations were established by him against her will. In her

statement recorded under Section 164 CrPC, she stated that she was enticed away by the applicant and was taken to Delhi where she remained with him for 20 days and the applicant established sexual relations with her with force.

7. While drawing the attention of this Court towards the above facts, it is submitted that if the statements of the prosecutrix/victim are read conjointly, it will emerge that the prosecutrix/victim had herself accompanied the applicant and thus, she was a consenting party and she is not speaking correct facts under the influence of her family members.

8. While drawing the attention of this Court towards the statement of the prosecutrix/victim recorded before the trial court as PW-2, it is further submitted that during the course of the cross examination, she has admitted that the sexual relations with the applicant were established by her with her own consent at Noida. Thus, she was a consenting party.

9. It is further submitted that as per the educational credentials, the date of birth of the prosecutrix/victim is shown as 4.3.2004 whereby she is coming as of 16 years and 4 months at the date and time of the alleged incident. However, the said date of birth may not be deemed conclusive in the background of the admission of the father of the prosecutrix/victim, who has been testified before the trial court as PW-1 wherein he has admitted that the age of the prosecutrix/victim was registered in the school records without any birth certificate.

10. It is further submitted that the age of the prosecutrix/victim is yet to be determined/assessed by the trial court. The applicant is in jail in this case since 22.2.2021 and he is not having any criminal antecedents. The medical examination report of the prosecutrix/victim is clean and no abnormality or injury of any kind has been found therein. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

11. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

12. Having heard learned counsel for the parties and having perused the record, it is evident that it has been admitted by the father of the prosecutrix/victim (informant) under cross examination that the age of the prosecutrix/victim in the school records was written without any birth certificate etc. and only on the basis of his memory. The attention of this Court has also

been drawn towards the statement of the prosecutrix/victim who has been testified before the trial court as PW-2, wherein she stated that the sexual relations at Noida were established with her consent. The material prosecution witnesses have been testified before the trial court. The medical examination report of the prosecutrix/victim is clean and no abnormality or injury of any kind has been found therein. The applicant is in jail in this case since 22.2.2021 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

13. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

14. Let the applicant- **Mayank Srivastava alias Chhotu** involved in the aforesaid case be released on bail on 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.

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

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

17. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 20.12.2023
Shravan