

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10743 of 2023

Applicant :- Abhai Yadav Alias Bhanu Yadav

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

Counsel for Applicant :- Raj Kumar Singh, Dharam Raj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Ravish Chandra Mishra, learned A.G.A. for the State and perused record. Learned counsel for O.P. No.2 is not present.

Supplementary affidavit filed today is taken on record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.FIR No.456 of 2022 under Section 363, 366, 376 (3) IPC and Section 5/6 of POCSO Act, PS Gurubuxganj, district Rae Bareli.

3. Learned counsel for the applicant has invited attention of this Court towards statement of prosecutrix under Section 164 CrPC in which the prosecutrix has deposed that she had gone to Kanpur where the applicant met the prosecutrix and thereafter, they had gone to Gujrat and lived there for 9 months and physical relation was established. She has further deposed that she wanted to live with the applicant. Learned counsel for the applicant has further submitted that as per radiological report, age of girl is 18 years and she is major. However, as per school certificate, she is 17 years. He has submitted that it is a case of consent and the prosecutrix who was sent in Home Protection, treating herself to be minor, now she has been released and at the moment, she is residing in the house of the applicant with applicant's family members and is being looked after by the family members of the applicant. The said fact has been stated in para-7 of the supplementary affidavit filed today. He has submitted that the applicant has no criminal history and he is in Jail since 14.4.2023.

4. Learned A.G.A. though opposed the prayer for bail but could not dispute the aforesaid fact that as per medical report the prosecutrix is 18 years of age and she is major, and in the statement under Section 164 she has not supported the prosecution case.

5. Considering over all facts and circumstances of the case, the argument that in statement under Section 164 CrPC, the prosecutrix has not supported the prosecution case which indicates that the applicant has not committed the offence and as per radiological report, the age of prosecutrix is 18 years and she

is major, it is a fit case for bail.

6. Let the applicant, Abhai Yadav alias Bhanu Yadav be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

7. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 19.10.2023

Rajneesh JR-PS)