

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10766 of 2023

Applicant :- Mohd. Salman

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

Counsel for Applicant :- Rajesh Kumar, Suhail Kashif

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit, filed today, is taken on record.
2. Learned A.G.A. submits that though on 28.08.2023, on being informed that the opposite party no. 2 has been served, it was directed to file proof of service upon opposite party no. 2, however, the same, due to inadvertent mistake, has not been filed. The communication received by the learned A.G.A. with regard to service upon opposite party no. 2 sent by the concerned police station is placed for perusal of this Court. The same is taken on record. The opposite party no. 2 appears to have been served sufficiently, however, he is not represented.
3. Heard Mr. Suhail Kashif, 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- **Mohd Salman** for grant of bail in Case Crime/FIR No.0783 of 2022, under Sections 363, 366, 376 and 342 IPC read with Section 3/4 POCSO Act, 2012 lodged at Police Station Kotwali Nagar, District Barabanki, during trial.
5. 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 05.08.2022 at police station Kotwali, Barabanki, alleging therein that his daughter aged about 15 years has been enticed away by the owner of mobile number 9118132454. Statement of the prosecutrix were recorded under Sections 161 and 164 CrPC wherein she stated to be in love with the applicant and that she left her home in order to solemnize marriage with the applicant and also that they resided in a hotel at Lucknow. In her statement recorded under Section 164 CrPC, the prosecutrix added that sexual relations between them were

established with her consent. It is further submitted that the prosecutrix, neither in her statements under Section 161 CrPC nor under Section 164 CrPC has imputed any allegation against the applicant. Though the prosecutrix was of tender age on the date and time of the incident, but she has also appeared before the trial Court as PW-1 and was intact in her chief-examination, but during cross-examination, she specifically denied not to have been abducted by the applicant and also that no sexual relations were established between them. It is vehemently submitted that since the star witness of the crime has chosen not to support the version of the prosecution, it would be impossible for the prosecution to secure conviction of the applicant before the trial Court. It is highlighted that the medical report of the prosecutrix is clean and, therefore, allegation of rape is not supported by the medical evidence. The applicant is languishing in jail in this case since 11.08.2022 and, he is not having any previous criminal history. Charge sheet in this case has already been filed 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.

6. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the sexual assault has been committed on a girl of a very tender age and, therefore, the applicant is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it is evident that though the age of the prosecutrix was about 15 years on the date and time of the incident, but in her statements recorded under Sections 161 and 164 CPC, she specifically stated to have accompanied the applicant for the purpose of solemnizing marriage as she was in love with him. The prosecutrix has also been examined as PW-1 before the trial Court. Though in her chief-examination she was intact, but in her cross-examination and re-examination, she has not supported the prosecution version. Significantly, the chief-examination of the prosecutrix was recorded when the applicant was not having any counsel as the amicus curiae could only be appointed by the trial Court after recording of her chief-examination. Only one prosecution witness appears to have been testified. It is vehemently submitted that since the prosecutrix has chosen not to support the prosecution case before the trial Court, there would be remote possibility of conviction of the applicant. The applicant is in jail in this case since 11.08.2022 without any previous criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

8. 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**.

9. Let the accused/applicant - **Mohd. Salman**, 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.

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

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

12. 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 31.10.2023

MVS/-