

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12030 of 2022

Applicant :- Pradeep Yadav

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

Counsel for Applicant :- Vivek Kumar Rai, Ajai Kumar, Anurag Henry, Rishabh Srivastava

Counsel for Opposite Party :- G.A., Santosh Kumar Srivastava

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Rishabh Srivastava, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Santosh Kumar Srivastava, learned counsel for the opposite party no.2/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Pradeep Yadav** for grant of bail, in Case Crime No.0117 of 2022, under Sections 363, 366, 376 I.P.C., 3/4 of the P.O.C.S.O. Act and 3(2)V of the S.C./S.T. Act, Police Station Kotwali Tanda, District Ambedkar Nagar, during trial.

3. 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.

4. It is further submitted that the victim in her statement recorded under Sections 161 and 164 Cr.P.C. victim has not imputed any allegation against the applicant rather she stated to have accompanied the applicant with her own free wish and will and also have solemnized marriage with him and had gone to Varanasi, thereafter to Delhi and from Delhi to Pune and ultimately settled at Kolkata. The prosecutrix in both of her statements has stated her age to be about 18 years and no abnormality or injury of any kind has been noticed in the medical report of the prosecutrix. Thus having regard to the age of the prosecutrix and her consent, no offence has been committed by the applicant.

5. It is also submitted that so much so the prosecutrix has appeared before the trial court as P.W.-2 and has been declared hostile and has not supported the version of the prosecution and on being declared hostile, she has also disowned her statement

recorded under Sections 161 and 164 Cr.P.C.

6. It is next submitted that applicant is in jail in this case since 07.07.2022 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.

7. 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.

8. Shri Santosh Kumar Srivastava, learned counsel for the opposite party no.2/complainant vehemently opposes the prayer of bail of the applicant on the ground that the age of the prosecutrix is very tender and having regard to the tender age, her consent is not material and thus, the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is evident that in her statement recorded under Sections 161 and 164 Cr.P.C., the prosecutrix has not levelled any allegation against the applicant. She stated to have accompanied the applicant with her consent and also that they have solemnized marriage and have stayed at different cities and resided there as husband and wife. She stated her age to be 18 years in her statement recorded under Sections 161 and 164 Cr.P.C., however, as per her educational credentials, she comes a little more than 15 years. It has been vehemently submitted on behalf of the applicant that the age of the prosecutrix is immaterial in this case as she has not supported the allegation of the prosecution in her statement recorded before the trial court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 07.07.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Pradeep Yadav** 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.

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

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

14. 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 :- 17.10.2023

Anupam S/-