

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10881 of 2023

Applicant :- Brij Mohan

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

Counsel for Applicant :- Rajiva Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Mr. Rajiva Dubey, learned counsel for the accused-applicant, as well as learned A.G.A. for the State and perused the record.

The State, along with its counter affidavit, has enclosed copy of communication sent by the concerned police station as Annexure CA-1 with regard to service affected upon opposite party no. 2. Thus, the opposite party no. 2 appears to have been sufficiently served, however, she is not represented.

2. This bail application has been moved by the accused/applicant- **Brij Mohan** for grant of bail in Case Crime No.0443 of 2022, under Sections 363, 366 and 376 IPC read with Section 3/4 Protection of Children from Sexual Offences Act, 2012 lodged at Police Station Isa Nagar, District Lakhimpur Kheri, 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 FIR of this case has been lodged by the mother of the prosecutrix on 22.08.2022 alleging therein that the applicant has enticed away her minor daughter on 14.08.2022 at 11 a.m. and thereafter the whereabouts of the victim are not known. On 23.08.2022, the prosecutrix is shown to have been recovered along with the applicant and her statements under Sections 161 and 164 CrPC were recorded. While highlighting the statements of the prosecutrix recorded under Sections 161 and 164 CrPC, it is vehemently submitted that the prosecutrix, in categorical terms, has stated that she herself left her home as she was being assaulted by her mother continuously and being aggrieved by the assaulted given by her

mother, she had called the applicant and solemnized marriage with him and remained with him about two months as his wife and sexual relations between them were made with her free will and wish.

5. It is further submitted that no allegation of any kind has been levelled by the prosecutrix against the applicant in her statements and she also acknowledged to have solemnized marriage with the applicant and in this regard the attention of this Court has been drawn towards the Annexure-10 to the bail application which is copy of marriage agreement executed between the parties on 20.08.2022. It is further submitted that though the prosecutrix was not major at the date and time of the alleged incident and as per educational credentials she was 16 years and 01 month old, but since she has not alleged any allegation against the applicant and is also stated to have solemnized marriage and, keeping in view that no basis for recording the date of birth of the prosecutrix in school record has been placed on record by the State, the age of the victim recorded in the school record may not be termed as conclusive and the same may be left to be determined by the trial Court.

6. It is next submitted that the applicant is languishing in jail in this case since 23.08.2022 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.

7. 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, therefore, he is not entitled to be released on bail.

8. Perusal of record, in the background of submissions advanced by the learned counsel for the parties, would reveal that the prosecutrix at the relevant date and time was aged about 16 years and 01 month. She has not stated anything against the applicant, rather admitted to have solemnized marriage with him and also that she was living with the applicant as his legally wedded wife. She has also refused to undergo any medical examination. The investigating officer appears to have filed charge-sheet against the applicant on the score that the age of the prosecutrix was tender and the defence of the applicant appears to be that the age of the prosecutrix recorded in school record may not be deemed to be conclusive as the same is yet to be finally adjudicated by the trial Court after providing an opportunity to the parties to lead evidence. The applicant is languishing in jail in this case since 23.08.2022 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.

9. 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**.

10. Let the accused/applicant- **Brij Mohan** 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.

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

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

13. 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 :- 21.11.2023
MVS/-