

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10882 of 2023

Applicant :- Rishi

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

Counsel for Applicant :- Dheeraj Awasthi

Counsel for Opposite Party :- G.A.,Upendra Kumar Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed on behalf of the opposite party no.2 (complainant) is taken on record.
2. Heard Shri Dheeraj Awasthi, learned counsel for the accused-applicant, learned counsel appearing for opposite party no.2 as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Rishi** for grant of bail, in Case Crime No. 116 of 2023, under Sections 363, 366, 376 I.P.C. and Section 3/4(2) of the Protection of Children from Sexual Offences Act, 2012, Police Station Auras, District Unnao, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the father of the prosecutrix against unknown person and the applicant was not named therein, alleging that the prosecutrix had gone missing since 05.06.2023. However, on being recovered on 03.07.2023, the statement of prosecutrix was recorded under Section 161 Cr.P.C., wherein she stated to be in a relationship with the applicant and also that on account of her relation with the applicant she was also scolded by her mother and brother and on account of this she had gone with the applicant and had remained with him at Bhilwara, Rajasthan for about a month and also solemnized marriage with him and now she wants to live with him.
5. In her statement recorded under Section 164 Cr.P.C., the prosecutrix has also not levelled any allegation against the applicant and categorically stated to have left her home on her own and to have made a phone call to the applicant and when he (applicant) refused to accompany her, she herself had gone to him and had persuaded him to accompany her and thereafter

they remained for 2-3 days separately and she also returned with her own wish and will.

6. Highlighting the above facts, it is vehemently submitted that the prosecutrix in her statements have not alleged any offence. She has not stated specifically as to whether any sexual intercourse had taken place between them and only on account of the fact that in her statement recorded under Section 161 Cr.P.C. the prosecutrix has stated to have solemnized marriage with the applicant and inference has been drawn by the investigating officer that applicant and prosecutrix might have cohabited, which is impermissible.

7. It is also submitted that medical report of the prosecutrix is clean and no injury, etc. has been found on her person at the time of the medical examination and no abnormality has also found therein. The age of the prosecutrix though, was about 15 years and 09 months at the date and time of the incident, but since she has not specifically stated about sexual intercourse, no offence under Section 376 I.P.C. could be made out. Applicant is languishing in jail in this case since 06.07.2023 and he is not having any 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.

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

9. Learned counsel appearing for opposite party no.2 vehemently opposes the prayer of bail of the applicant on the ground that the prosecutrix was not of consensual age and, therefore, her consent is immaterial and keeping in view the fact that she has been enticed away by the applicant and have also been subjected to rape, the facility of bail may not be extended to the applicant.

10. Perusal of the record in the background of the submissions made by learned counsel for the parties would reveal that in the F.I.R. applicant was not named and it is stated therein that the prosecutrix had herself left her home and had gone missing. In her statements recorded under Section 161 and 164 Cr.P.C., the prosecutrix has also not levelled anything against the applicant. Though, the age of the prosecutrix has been assessed as 15 years and 09 months at the date and time of the incident, however, it is submitted with considerable force that the tender age of the prosecutrix is immaterial, as no specific allegation of

committing sexual assault has been made by her against the applicant. Applicant is languishing in jail in this case since 06.07.2023 without any 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.

11. 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**.

12. Let the accused/applicant- **Rishi** 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.

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

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

15. 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.

Order Date :- 18.11.2023

Praveen