

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10994 of 2023

Applicant :- Chotu Nai Alias Rohit

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

Counsel for Applicant :- Prabhat Kumar Upadhyay, Radhika Kashyap

Counsel for Opposite Party :- G.A., Dr. Shailendra Sharma, Shitesh Jha

Hon'ble Mohd. Faiz Alam Khan, J.

1. While the name of Dr. Shailesh Sharma, Advocate and Shri Shitesh Jha, Advocate is printed in the cause list on behalf of the opposite party no.2. However, none of them is present at the time of hearing of this case nor any request for adjournment has been made on their behalf.

2. Heard Shri Prabhat Kumar Upadhyay, learned counsel for the accused/applicant 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- **Chotu Nai alias Rohit** for grant of bail, in Case Crime No. 258 of 2022, under Sections 363, 366, 376, 506 IPC & Section 3/4 of POCSO Act, Police Station- Sampurna Nagar, District Lakhimpur Kheri, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.

5. It is further submitted that in the FIR which has been lodged by the father of the victim, it is stated that on 30.9.2022 at about 3.00 am, the applicant had enticed away his minor daughter with the help of other accused persons. On being recovered, the statement of the victim was recorded under Section 161 CrPC wherein she stated that she had left her home on her own and had gone to Jalandhar and resided in a Gurudwara for six days as she was annoyed by the behaviour of her family members and she was not enticed away by anyone.

6. It is further submitted that in the statement recorded under

Section 164 CrPC, she is stated to be in love with the applicant and also that on 30.9.2022 at 11.30 pm, she had gone to Jalandhar with the applicant. It is also stated by her that they were in love with each other and the sexual relations between them were also established with her consent.

7. Highlighting the above statements of the victim, it is vehemently submitted on behalf of the applicant that the date of birth of the victim is 16.6.2005 and thus, her age was 17 years and 3 months at the date and time of alleged incident. Though she was minor, but she had sufficient intellect to understand her welfare as well as the nature of the act and since the sexual relations have been made by her with her free consent, no offence has been committed by the applicant.

8. It is further submitted that the applicant is in jail in this case since 13.10.2022 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A., on the other hand, opposes the prayer for grant of bail of the applicant on the ground that the consent of the victim is immaterial as she was minor at the date and time of incident. Thus, the applicant is not entitled for any relief.

10. Having heard learned counsel for the parties and having perused the record, it is evident that at the relevant point of time, the victim was aged about 17 years and 4 months as per her educational credentials. Though she was not major, but she appears to have sufficient intellect to understand her welfare. The age of the applicant is also stated to be about 23 years. The victim in her statements has not alleged any imputation against the applicant rather it is admitted that she was in love with the applicant and had gone with him on her own volition and sexual relations between them were also established with her consent. The applicant is in jail in this case since 13.10.2022 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

12. Let the applicant- **Chotu Nai alias Rohit** involved in the aforesaid case be released on bail on 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 are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 22.11.2023

Shravan