

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11072 of 2023

Applicant :- Panku Das

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

Counsel for Applicant :- Neeraj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. The State along with its counter affidavit has filed a communication received from the concerned police station with regard to the service on opposite party no.2 (complainant), perusal of which, reveals that the opposite party no.2 (complainant/informant) has been sufficiently served. However, he is not represented.

2. Heard Shri Neeraj Singh, 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- **Panku Das** for grant of bail, in Case Crime No. 357 of 2022, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012, Police Station Fatehpur Chaurasi, 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. In the first information report, which has been lodged by the father of the victim, it is alleged that on 23.12.2022 at about 5:30 pm. the victim had left her home and could not be traced thereafter and on the same day at about 8:00 pm. a call was received from an unknown person informing that the victim had arrived at Anand Vihar, Delhi. It is also alleged that while leaving home, the victim has also taken with her Rs. 50,000/- and age of the victim is around 15 years.

5. While referring to the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., it is submitted that she has not alleged any imputation against the applicant rather she had stated her age to be of 18 years and also that she was in love with the applicant for the last two years and had gone to Delhi

with him and they have also solemnized marriage at Darbhanga, Bihar and thereafter living as husband and wife.

6. The attention of this Court has also been drawn towards a copy of an agreement allegedly executed between the applicant and victim with regard to entering into the relationship of marriage. It is vehemently submitted that the age of the prosecutrix, as stated by her in her statements is 18 years and in her 'Aadhar Card' also, a copy of which has been placed at Annexure No.3 of the paper book, her age has also shown to be of 18 years while through ossification test her age has been determined as 16 years and as per her educational credentials her age is coming as about 15 years and 04 months. Thus, having regard to the discrepancy of her age in various documents, the age of the prosecutrix recorded in the school record may not be deemed as conclusive and the same is yet to be determined by the trial Court and since the prosecutrix has not alleged any imputation against the applicant, no offence in fact has been committed by the applicant.

7. It is next submitted that applicant is languishing in jail in this case since 22.03.2023 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. Having heard learned counsel for the parties and having perused the record, it is evident that there is discrepancy in the age of the prosecutrix, as in Aadhar card, her age has been shown as 18 years and through ossification test her age has been determined as 16 years, which is capable of variation of two years either side and through educational credentials her age may come as about 15 years and 04 months at the date and time of the incident. Thus, there appears force in the submissions made on behalf of the applicant that age of the prosecutrix recorded in the school record may not be deemed/presumed conclusive and the same is open to be determined by the trial Court, after providing an opportunity to lead evidence to the parties. The prosecutrix admittedly has not alleged any imputation against the applicant. An agreement of marriage is also shown to have been executed between the applicant and victim, a copy of which has been placed on record. Applicant is languishing in jail in this case since 22.03.2023 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.

10. 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- **Panku Das** 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 on the merits of the case.

Order Date :- 24.11.2023

Praveen