

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11169 of 2023

Applicant :- Ram Bahadur Singh

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

Counsel for Applicant :- Abrar Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit, filed today, is taken on record.

As per communication sent by the concerned police station, a copy of which has been placed on record as CA-6 to the counter affidavit filed by the State, opposite party no. 2 appears to have been served, however, she is not represented.

2. Heard 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- **Ram Bahadur Singh** for grant of bail in Case Crime No.0183 of 2023, under Sections 363, 366 and 376(3) IPC read with Section 3/4 POCSO Act and Sections 3(2)V SC/ST Act lodged at Police Station Mill Area, District Raebareli, during trial.

4. 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.

5. It is further submitted that in the FIR which has been lodged by mother of the prosecutrix it is alleged that on 23.04.2023 at about 10 a.m. the prosecutrix had gone for repairing of her mobile phone, however, she did not return. On being recovered, statements of the prosecutrix was recorded under Sections 161 and 164 CrPC wherein she stated to have left her home on her own as she was in love with the applicant and that she had gone to Unnao where she called the applicant and when the applicant persuaded her to go back, she refused to return to her home and at that juncture the applicant had taken her to a room and also that they solemnized marriage and started living in a rented accommodation.

6. Highlighting the above facts, it is vehemently submitted that it is admitted by the prosecutrix in her statement that it was she who had left her home on her own and was not enticed away by the applicant and had reached Unnao without being abducted or kidnapped by the applicant and when she was persuaded to go back, she insisted to remain with the applicant and, it is on this score, the prosecutrix was taken by the applicant to a rented accommodation. It is also submitted that the age of the prosecutrix as per FIR and as per educational credentials is 15 years 05 months, while as per radiological process, her age has been assessed as 18 years and, thus, she was not major at the date and time of the incident, but having regard to the manner she has left her home and gone to Unnao reflects that she was having sufficient intellect to understand her welfare and nature of the act. It is also submitted that the factum of sexual assault is not corroborated by the medical evidence wherein no injury of any kind or any abnormality has been found.

7. It is next submitted that applicant is languishing in jail in this case since 01.05.2023 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.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the consent of the prosecutrix is immaterial as she was not of consensual age and, therefore, the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted situation that the prosecutrix was not major at the date and time of the incident and as per educational testimonials she was 15 and a half years old and in ossification test, her age has been assessed as 18 years. The prosecutrix in her statements admitted to have left her home herself, without being influenced by the applicant and also that she had gone to Unnao on her own. It is also surfaced in her statements that she was asked by the applicant to go back but she insisted to remain with him and thereafter the prosecutrix was taken by the applicant to a room and on the next day they solemnized marriage and started living as husband and wife. The finer points, regard to culpability of the applicant, may be better appreciated and adjudicated by the trial Court after opportunity to lead evidence is given to the parties. Keeping in view that the applicant is not having any criminal history to his credit and also the statements of the prosecutrix, case for bail is made out in favour of the applicant, who is detained in prison since 01.05.2023. 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- **Ram Bahadur Singh**, 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 1.11.2023

MVS/-