

**Court No. - 28**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11141 of 2023

**Applicant :-** Karan

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

**Counsel for Applicant :-** Anand Kumar

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mrs. Jyotsna Sharma,J.**

01. Heard Shri Anand Kumar, learned counsel for applicant and Sri Rajneesh Kumar Verma, learned A.G.A. for the State.

02. The present bail application has been filed by the applicant seeking bail in Special Trial No.15 of 2023, case crime no.0413 of 2022, under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act, P.S. Lalganj, District Pratapgarh.

03. As per version of the F.I.R., 15 years old daughter of the first informant did not return to her house after going to market for purchasing some items. The first informant, mother of the victim tried to search for but she could not find her. This incident happened on 14.06.2022 at about 6.00 P.M. whereas the first informant lodged an F.I.R. on 24.06.2022. As per prosecution case, she returned to her house on 10.11.2022 and thereafter her statement was recorded by the Investigating Officer.

04. It is contended on behalf of the applicant that case does not fall within the definition of Sections 363, 366, 376 I.P.C. as the victim left her house on her own. It is further submitted that material witnesses including the first informant has clearly stated that she had left her house six months earlier also. At that time no F.I.R. was lodged. The the victim in her statement under Section 161 Cr.P.C. has exonerated the applicant by saying that she accompanied the accused applicant willingly and they got married to each other and have been living as husband and wife and that she returned to her house on her own. She has stated her age as 16 years in her statement. My attention has been drawn to the statement recorded under Section 161 Cr.P.C. in which she reiterated the same story and she imputed no allegations against the accused. She instead has said that she was in relationship with the accused and that she was having love affair. It is argued that the applicant too is about 19 years and that it is case of teenage love relationship. The medical evidence has not suggested any maltreatment or forcible physical sexual assault. As far as radio-logical age is concerned, there is always scope for variation and that prosecution case cannot rest only upon the radio-logical age of the victim detached from other facts and circumstances..

05. The application for bail is opposed by learned A.G.A. highlighting the fact that the victim was found between 15 to 16 years and that she was put to sexual relationship by the accused and therefore, prima facie offence under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act is made out.

06. I considered rival submissions, contents of the F.I.R., the statements given by the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. and other witnesses, the medical evidence collected by the I.O.. This fact is indisputable that the applicant is in jail since 03.12.2022 i.e. since more than 11 months and that none can say with certainty that how long will it take for concluding the trial. In my view, a case for bail is made out.

07. Let applicant - **Karan** be released on bail in the aforesaid Case Crime Number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not temper with evidence/witnesses.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) framing of charge and (ii) recording of statement under Section 313 Cr.P.C. without exception.

08. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

**Order Date :- 16.11.2023**

Asha