

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11167 of 2023

Applicant :- Raman Kumar

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

Counsel for Applicant :- Pramod Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. while drawing attention of this Court towards the page 5 of the counter affidavit informs that opposite party no.2 has been sufficiently served at their end, however, none is present on behalf of the opposite party no.2/complainant.

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- **Raman Kumar** for grant of bail, in Case Crime No.255 of 2023, under Sections 363, 366, 376 I.P.C. and 5(L)/6 of the P.O.C.S.O. Act, Police Station Safdarganj, District Barabanki, 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 F.I.R., which has been lodged by the father of the prosecutrix on 30.06.2023, it is alleged that his daughter aged about 16 years has been enticed away by the applicant. The prosecutrix, however, recovered after four days of the incident and her statement under Sections 161 and 164 Cr.P.C. was recorded. In her statement recorded under Section 161 Cr.P.C., she stated to have accompanied the applicant as she was scolded by her father and also that she was on talking terms with the applicant and they had gone to various places and denied the establishment of sexual relations with her by the applicant, however, in her statement recorded under Section 164 Cr.P.C. after seven days of recording of her statement under Section 161 Cr.P.C., she stated to have accompanied the applicant and two other accused persons and

that she was taken to different places by the applicant, where sexual relations were also established.

6. Highlighting the statements of the prosecutrix, it is vehemently submitted on behalf of the applicant that in these statements the prosecutrix has not alleged forceful sexual intercourse with her and the act of the prosecutrix in accompanying the applicant and also of residing with the applicant is itself sufficient to infer that she was a consenting party.

7. It is further submitted that it is only the age of the prosecutrix, which is against the applicant as at the date and time of alleged incident, age of the prosecutrix as per her educational credentials is shown to be little less than 16 years, however, the said age has been projected on the basis of high school certificate, but having regard to the fact that the prosecutrix was mature enough to understand her welfare as well as nature of the act and since she has not alleged anything against the applicant, no offence is made out against the applicant.

8. It is next submitted that applicant is in jail in this case since 15.07.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. 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 consent of the prosecutrix is immaterial having regard to her minority and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that age of the applicant is about 20 years as per Annexure No.6, which is a transfer certificate of the applicant of Class-5th, while the age of the prosecutrix as shown by the prosecution is about 16 years, thus the applicant as well as the prosecutrix were of young age. Admittedly the prosecutrix has not stated anything against the applicant except that in her statement recorded under Section 164 Cr.P.C., she stated that in a hotel, where they remained for five days, sexual relations were forcefully made by the applicant. The prosecutrix has been medically examined on 05.07.2023 and no injury etc. has been found on her person and it is in this background submitted with considerable force by

learned counsel for the applicant that it is a case of consent of two young persons pertaining to establishment of sexual relations. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 15.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and 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- **Raman Kumar** 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 of this Court on the merits of the case.

Order Date :- 8.12.2023

Anupam S/-