

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13551 of 2022

Applicant :- Sanjay

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

Counsel for Applicant :- Ashok Kumar Singh, Dilip Kumar Pandey, Manoj Kumar Verma, Neeraj Singh, Ram Mohan Mishra, Sukhveer Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The State along with its counter affidavit has enclosed service of notice on the opposite party no.2. However, he 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- **Sanjay** for grant of bail, in Case Crime No. 7 of 2021, under Sections 376, 506 IPC & Sections 3/4 of POCSO Act, Police Station Bangermau, District Unnao, 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 the FIR of this case has been lodged by the father of the prosecutrix/victim alleging therein that on 8.1.2020 at about 3.00 pm, the prosecutrix/victim aged about 14 years was enticed away by the applicant in an agricultural field where he committed rape on her. The statements of the prosecutrix/victim were recorded under Sections 161 & 164 CrPC wherein she alleged commission of rape by the applicant.
6. Highlighting the above facts, it is vehemently submitted that the statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC are not finding corroboration from any medical evidence as no abnormality or injury of any kind has been found in the medical examination report of the

prosecutrix/victim while she was medically examined promptly.

7. It is further submitted that the statement of the prosecutrix/victim has also been recorded before the trial court as PW-1, while under examination in chief she was intact. However, during the cross examination, she became hostile and has categorically stated that she was not sexually assaulted by the applicant or any other person.

8. It is also submitted that the age of the prosecutrix/victim has been shown as 14 years, but through ossification test, her age has been shown as 16 years and having regard to the two years variable either side pertaining to the age determined through ossification process, the prosecutrix/victim may be of the age of 18 years at the date and time of the incident and since she appears to be a consenting party, no offence in fact has been committed by the applicant.

9. It is further submitted that apart from the prosecutrix/victim, the other witnesses of fact testified before the trial court have supported the version of the prosecution. Since the star witness of the crime has become hostile, the conviction of the applicant would be a remote possibility. He is in jail in this case since 10.1.2021 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.

10. Learned A.G.A., on the other hand, opposes the prayer for bail of the applicant and submits that the prosecutrix/victim was minor at the date and time of the incident and she has fortified the allegation of rape in her statements recorded under Sections 161 & 164 CrPC. Thus, the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it would reveal that the age of the prosecutrix/victim has been assessed through radiological process as 16 years. The law with regard to the age determined through radiological process is now well settled and this age may be variable either side by two years. Significantly, the prosecutrix/victim has been testified before the trial court as PW-1, wherein though she was intact in her examination in chief, but has become hostile under cross examination and stated that she was not subjected to rape by the applicant and it is on this ground, it is submitted by learned counsel for the applicant that since the star witness of this crime i.e. prosecutrix/victim has become hostile, the conviction of the

applicant would be a remote possibility. The applicant is in jail in this case since 10.1.2021 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- **Sanjay** 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 :- 20.12.2023

Shravan