

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12478 of 2022

Applicant :- Ramesh Kumar Yadav

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

Counsel for Applicant :- Ashish Raman Mishra, Aradhana Chaturvedi, Arun Kumar, Vineet Kumar Yadav

Counsel for Opposite Party :- G.A., Pradeep Kumar Singh Vats

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard Shri Vineet Kumar Yadav, learned counsel for the accused-applicant, Shri Pradeep Kumar Singh Vats, learned counsel appearing for the complainant/informant 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- **Ramesh Kumar Yadav** for grant of bail, in Case Crime No. 49 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 Bhati, District Ambedkar Nagar, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the father of the victim on 25.04.2022 against unknown person alleging that on 23.04.2022 at about 11:00 am. her daughter, aged about 17 years had gone missing and is not traceable. However, after the recovery of the prosecutrix her statement under Section 161 and 164 Cr.P.C. was recorded, wherein she has stated to have accompanied the applicant and in her statement recorded under Section 161 Cr.P.C. she has stated to have solemnized marriage with her consent, however, in her statement recorded under Section 164 Cr.P.C. she stated that she had solemnized marriage with the applicant under the pressure given by her family members and also that sexual relations were made by the applicant with her against her wish. The hymen of the prosecutrix in her medical injury report was found 'ruptured' and old healed.

5. It is vehemently submitted by learned counsel for the applicant that the prosecutrix had accompanied the applicant with her free wish, will and consent and they have also solemnized marriage. Though, the prosecutrix was not major at the date and time of the incident but she was admittedly about 17 years and appears to be consenting party in fact no offence has been committed by the applicant.

6. It is further submitted that during the course of trial the prosecutrix' statement has been recorded as P.W.-2 wherein though in her in-chief-examination she has supported the prosecution version but in cross-examination she has categorically stated that she was neither abducted by the applicant nor any sexual relation was established. She also stated her age to be of 21 years at the date and time of recording of her statement before the trial Court.

7. It is vehemently submitted that since the prosecutrix has chosen not to support the version of the prosecution, it would not be possible for the prosecution to secure the conviction of the applicant and the mother of the prosecutrix has also been testified as P.W.-3, who is also not supported the prosecution version. Applicant is languishing in jail in this case since 24.07.2022 and he is not having any criminal history 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. Shri Pradeep Kumar Singh Vats, learned counsel appearing for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that the prosecutrix at the relevant point of time was of tender age and, therefore, was not in a position to give consent and having regard to the minority of the prosecutrix, applicant is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the date of birth of the prosecutrix at the relevant point of time has been shown as 10.07.2005, by which, she comes about 16 years and 09 months at the time of incident. There is another document, which has been acknowledged by P.W.-1 as well as by the prosecutrix, wherein the date of birth of the prosecutrix has been shown as 01.01.2003. While referring to the statement of P.W.-1/informant and P.W.-2/prosecutrix, it is submitted by the

applicant that the date of birth of the prosecutrix is 10.07.2005 and the same is not conclusive. The prosecutrix has not supported the version of the prosecution before trial Court. Applicant is languishing in jail in this case since 24.07.2022 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing 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 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- **Ramesh Kumar Yadav** 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 on the merits of the case.

Order Date :- 16.10.2023

Praveen