

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12697 of 2022

Applicant :- Vijay Dhanuk

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

Counsel for Applicant :- Smriti

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per communication sent by the Chief Judicial Magistrate, Hardoi of date 30.11.2022, opposite party no.2 has been served sufficiently, however, he is not represented.

2. Heard Ms. Smriti, 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- **Vijay Dhanuk** for grant of bail, in Case Crime No.225 of 2018, under Sections 363, 366, 376(3) I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Mallawan, District Hardoi, 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 F.I.R. of this case was lodged by the father of the prosecutrix on 16.08.2018 alleging therein that the named accused person Somesh had enticed away his daughter aged about 14 years, however, on the recovery of the prosecutrix her statement under Sections 161 and 164 Cr.P.C. was recorded, wherein she stated to be in love with the applicant and that she had accompanied him on 11.08.2018 with her free wish and will and they solemnized marriage in a temple and started living as husband and wife and thereafter on 01.05.2019, she was blessed with a child. In her statement recorded under Section 164 Cr.P.C. she specifically stated that sexual relations were established between her and applicant with her free consent.

6. It is vehemently submitted on behalf of the applicant that the prosecutrix at that time was aged about 15 years and 3 months

on the basis of her educational credentials and 18 years as per ossification test. However, she has categorically stated to be in love with the applicant and also stated that she has solemnized marriage and has been blessed with a child.

7. It is emphasized that statement of the prosecutrix has also been recorded before the trial court as P.W.-1, wherein she stated her date of birth as 07.01.1999 and have reiterated her statements recorded under Sections 161 and 164 Cr.P.C. that she had herself accompanied the applicant and sexual relations were also established between them with free her consent and she has also been blessed with a child.

8. It is also submitted that since the prosecutrix has not supported the allegation of the F.I.R. and now she is living with the family members of the applicant and have categorically stated before the trial court that she has solemnized marriage with the applicant and now she has also become major, further detention of the applicant in prison in this case would be futile and chances of conviction of the applicant are remote.

9. It is next submitted that applicant is in jail in this case since 14.09.2019 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.

10. 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 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.

11. Having heard learned counsel for the parties and having perused the record, it is evident that it is only on account of minority of the prosecutrix, charge sheet appears to have been filed against the applicant as she has not alleged any imputation against the applicant in her statement recorded under Sections 161 and 164 Cr.P.C. She has been testified before the trial court as P.W.-1 and has reiterated that she was in love with the applicant and had gone with him with her free wish and will and sexual relations between them were also established with her consent. Now the prosecutrix has become major. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 14.09.2019 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Vijay Dhanuk** 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.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

16. 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 :- 13.10.2023

Anupam S/-