

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11643 of 2023

Applicant :- Jevala Alias Jiya Lal Yadav Alias Mahatiya

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

Counsel for Applicant :- Amit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. The State in its counter affidavit has enclosed a copy of the notice sent by the concerned Police Station, whereby the opposite party no.2/ complainant was served, thus the opposite party no.2 appears to have been served, however, she 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- **Jevala Alias Jiya Lal Yadav Alias Mahatiya** for grant of bail, in Case Crime No. 192/2023, under Sections 363, 366, 376 IPC and 5(J) (2)/6 Protection of Children from Sexual Offences Act, Police Station Isa Nagar, District Lakhimpur Kheri, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report has been lodged by the mother of the victim on 23.5.2023 alleging therein that on 12.5.2023 at about 11.00 A.M. the applicant has enticed away her daughter aged about 16 years. The prosecutrix/ victim was recovered on 25.6.2023 from Adlispur Crossing and in her statements recorded under Sections 161 and 164 Cr.P.C. she stated her age to be of 16 years and also that she had gone with applicant with her free wish and will and they were residing in a rented accommodation as husband and wife and sexual relations were also established between them.

4. While drawing the attention of this Court towards the medical report of the prosecutrix, it is submitted that no abnormality or injury of any kind has been found on the person of the prosecutrix and her age as per ossification test is assessed as 16-17 years while her educational credentials shows

her age as 17 years at the date and time of the incident.

5. Elaborating further it is submitted that the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has categorically stated to have accompanied the applicant on her own and though she was not major at the date and time of the incident but having regard to the age of 17 years she was possessing sufficient intellect to understand her welfare as well as the nature of act. The applicant is in jail in this case since 3.7.2023 and he is not having any criminal antecedent. Charge sheet in the matter has already been submitted 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.

6. Learned A.G.A. on the hand submits that the applicant is accused of committing heinous offence.

7. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix's age as per her educational credentials was of 17 years at the date and time of incident and radio logical age of the prosecutrix is shown as 15/17 years. She was not major at the time of occurrence but appears to be possessing sufficient intellect to understand her welfare as well as the nature of the act. Admittedly she had accompanied the applicant on her own and also stated to have established sexual relations with her consent. The applicant is in jail in this case since 3.7.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

8. 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**.

9. Let the applicant- **Jevala Alias Jiya Lal Yadav Alias Mahatiya** 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.

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

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

12. 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 :- 8.11.2023

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