

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12971 of 2022

Applicant :- Shyamu Alias Shyam Singh

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

Counsel for Applicant :- Alok Kumar Srivastava, Mansi Gupta, Mukesh Kumar Tewari, Sunil Mohan

Counsel for Opposite Party :- G.A., Anil Kumar Dwivedi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Though the name of Shri Anil Kumar Dwivedi is printed in the cause list as learned counsel for opposite party no.2 (complainant), however, he is not present nor any request has been made on his behalf to adjourn the case.

2. Heard Shri Mukesh Kumar Tewari, 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- **Shyamu Alias Shyam Singh** for grant of bail, in Case Crime No. 293 of 2022, under Section 342 and 376 I.P.C. and Section 3(2)(Va), 3(2)(V) of S.C./S.T. Act and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station Sandi, District Hardoi, 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 prosecutrix on 05.08.2022 at Police Station Sandi, District Hardoi with regard to the incident which had occurred in the intervening night of 04/05.08.2022 with the allegations that the daughter of the informant has been molested by the applicant on 04.08.2022 at about 9:00 pm. and on an alarm raised by her applicant was challenged by the informant and other villagers, on which, he fled away from the scene. The prosecutrix/victim in her statement recorded under Section 161 and 164 Cr.P.C. had alleged sexual assault on the applicant. In the medical examination report of the prosecutrix conducted on 08.08.2022 no significant finding has been found.

5. Highlighting the above facts, it is vehemently submitted that the prosecutrix in her statement recorded under Section 161 and

164 Cr.P.C. had categorically admitted that she was talking to the applicant on her phone for the last six months and also that she was taken away by the applicant and was taken to his house where he committed sexual assault. It is submitted that this story, which has narrated by the prosecutrix is in direct contrast with the description of the incident given in the first information report, wherein the fact of abducting the prosecutrix has not been stated, while in the statement of the informant as well as of the prosecutrix for the very first time the fact pertaining to the abduction has been levelled. The prosecutrix was in fact in a relationship with the applicant and the story, which has been narrated by her in her statement recorded under Section 161 and 164 Cr.P.C. could not be believed, moreso when the medical examination report of the prosecutrix is clean.

6. It is next submitted that applicant is languishing in jail in this case since 12.08.2022 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.

7. 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.

8. Perusal of the record would reveal that the date of birth of the prosecutrix as per her educational credentials is 10.11.2005. In the first information report the prosecutrix is shown aged about 15 years, while as per ossification test her age has been assessed as 15-16 years, which is capable of being interpreted two years variable either side. The prosecutrix, though, with some hesitation has admitted in her statement recorded under Section 161 and 164 Cr.P.C. that she was talking to the applicant from before the incident and also that she was not willing to accompany the applicant. However, it has been argued with considerable force that if the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. conjointly and as a whole, it would be revealed that the prosecutrix was a 'consenting party'. Applicant is languishing in jail in this case since 12.08.2022 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the accused/applicant- **Shyamu Alias Shyam Singh** 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.

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

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

13. 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