

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13765 of 2022

Applicant :- Manoj

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

Counsel for Applicant :- Dheerendra Singh, Anil Mishra, Rajat Raj Narayan Bajpai

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the information furnished by the Chief Judicial Magistrate, Unnao, the opposite party No.2/complainant has been served, 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- **Manoj** for grant of bail, in Case Crime No.0214/2022, under Sections 364 I.P.C. (during investigation changed under Sections 323/504/363/366/376/342/328 I.P.C. & 3/4 POCSO Act, Police Station- Safipur, District- Unnao, 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 the first information report of this case has been lodged by the father of the victim on 17.05.2022 at Police Station- Safipur, District- Unnao alleging therein that his daughter aged about 20 years, who has been divorced by her husband, has been abducted by the applicant in the night of 13.05.2022 and since then, she is not traceable. However, on 20.05.2022, the prosecutrix was recovered with the applicant and her statement was recorded under Sections 161 and 164 Cr.P.C., wherein she alleged that she was abducted by the applicant and was also subjected to sexual assault.
6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the applicant and the prosecutrix were in a relationship since long as the prosecutrix was the divorcee and they intended to solemnize marriage and on the relevant day, the prosecutrix herself had accompanied the applicant, however, under the pressure of her family members,

she has alleged sexual assault against the applicant in her statement recorded under Sections 161 and 164 Cr.P.C.

7. It is vehemently submitted that the allegations of the prosecutrix as leveled in her statement recorded under Sections 161 and 164 Cr.P.C are belied by the medical report of the prosecutrix wherein no abnormality or injury of any kind has been found.

8. It is further submitted that the mother of the prosecutrix has also fortified the relationship of the applicant with the victim in her statement recorded under Section 161 Cr.P.C., wherein she has categorically stated that the applicant and the prosecutrix were in a relationship and the prosecutrix had gone to the field of the applicant when she was called by him.

9. It is also submitted that the age of the prosecutrix as per her educational credential could not be termed as conclusive as in her statement recorded under Section 161 Cr.P.C., she has stated her age to be of 17 years while her father who had lodged the first information report has stated her age to be of 20 years while in her statement recorded under Section 164 Cr.P.C., she has stated her age to be of 17 years. Thus, the real age of the prosecutrix is yet to be determined by the trial Court after providing an opportunity to the parties to lead evidence.

10. It is next submitted that applicant is in jail in this case since 21.05.2022 and the trial of the case is not going to conclude in near future. The applicant is not having any criminal history 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.

11. 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.

12. Perusal of the record would reveal that there is discrepancy in the age of the prosecutrix as recorded in the school record and as stated by the informant and even by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C and it is in this background it is submitted that the real age of the prosecutrix is yet to be determined by the trial Court after providing an opportunity to the parties to lead evidence and her age as shown in the educational record may not be termed as conclusive. Admittedly, there is no injury etc. found on the

person of the prosecutrix when she was medically examined. The statement of the mother of the prosecutrix was also highlighted in order to show that the prosecutrix and the applicant were in a consensual relationship and it was also emphasised that the manner in which the prosecutrix has been recovered with the applicant would itself suggest that she was a consenting party. Applicant is in jail in this case since 21.05.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the accused/applicant- **Manoj** 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.

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

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

17. 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 :- 26.10.2023

Gurpreet Singh