

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11788 of 2023

Applicant :- Arjun

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

Counsel for Applicant :- S.K. Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Notice has been served upon opposite party no. 2, but none is present before the Court.
2. Counter affidavit filed by learned A.G.A for the State is taken on record.
3. Heard Shri S.K. Tripathi, learned counsel for the applicant as well as Ms. Priyanka Pandey, learned A.G.A. for the State and perused the record.
4. This bail application has been filed seeking release of the accused/applicant **Arjun** on bail, who is involved in Case Crime No. 338 of 2023 under Sections 363, 366, 376 I.P.C and Section 3/4 POCSO Act, Police Station Kotwali City, District Hardoi.
5. Learned counsel for the applicant submitted that the First Information Report has been lodged by the grandfather of the prosecutrix, wherein it is mentioned that the applicant enticed away his grand daughter. Learned counsel for applicant has drawn attention of the Court towards the statement of prosecutrix recorded under Section 164 Cr.P.C, wherein she has stated that she was in love with the applicant for the last five months and she had gone along with the applicant to Delhi, where they performed marriage. She further deposed before the Court that the applicant had established physical relation with her out of her free will. Learned counsel for applicant has invited attention of the Court towards the Radiological Report, which indicates the age of prosecutrix as 17 years. He further submitted that the upper age limit benefit (of two years) may be granted to the applicant and it may be inferred that the at the relevant time, the prosecutrix was major. He further submitted that statement of father of prosecutrix was recorded in which he has admitted that his daughter and the applicant were working together in a factory, where they both fell in love with each other, which

clearly indicates that it is a case of consent and not a case of rape and the applicant has been falsely implicated in the present case.

6. Learned counsel for applicant submitted that after looking into the statement of prosecutrix recorded under Section 164 Cr.P.C and also the statement of father of prosecutrix recorded under Section 161 Cr.P.C, it can be inferred that it is a case of consent and no offence is made out against the applicant. Learned counsel for the applicant further stated that there is no previous criminal history of the applicant and he is languishing in jail since 20.05.2023.

7. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that as per school record, the date of birth of the prosecutrix is 28.08.2007 and at the relevant time, she was 16 years of age, but he could not dispute the fact that the radiological age of the prosecutrix is 17 years.

8. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that statement of prosecutrix recorded under Section 164 clearly indicates that she was in love with the applicant and physical relation was established between them out of free will of prosecutrix and marriage was also performed between them, the argument that it is a case of consent and the prosecutrix has not supported the prosecution case, I find it to be a fit case for grant of bail.

9. Accordingly, the bail application is **allowed**.

10. Let the applicant **Arjun** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

11. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 18.10.2023

DiVYa