

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11741 of 2023

Applicant :- Suraj Shukla

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

Counsel for Applicant :- P.K. Singh Bisen

Counsel for Opposite Party :- G.A., Amit Ranjan Mishra

Hon'ble Brij Raj Singh, J.

1. Rejoinder affidavit filed today by Sri P.K. Singh Bisen, learned counsel for the applicant, is taken on record.
2. Heard learned counsel for the applicant, learned counsel for opposite party no.2 as well as learned A.G.A. for the State and perused the record.
3. This bail application has been filed seeking release of accused/applicant- **Suraj Shukla** on bail, in Case Crime No.178 of 2023 under Sections 363, 366, 376 of I.P.C. and Section 3/4 of The Protection of Children from Sexual Offences, Act, 2012, related to the Police Station - Kunda, District - Pratapgarh.
4. Learned counsel for the applicant has invited attention of the Court towards the statement of the prosecutrix recorded under section 164 CrPC in which the prosecutrix has deposed before the court that out of her own free will, she had fled away from her house and on her call, the applicant- Suraj Shukla came and thereafter they both ran together to Prayagraj. They came to Gonda and from Gonda they had gone to Lucknow. The prosecutrix has further deposed that for one month, she remained in Lucknow with the applicant and the applicant established physical relation with her with her own consent. She has further deposed that from Lucknow, she had gone to Bhiwandi, Maharashtra and came back to Prayagraj on 15.06.2022.
5. Learned counsel for the applicant has further submitted that the age of the prosecutrix is more than 18 years and she was major on the relevant time/date and it is a case of consent. He has further submitted that as per school certificate the date of birth of the prosecutrix is 11.10.2008 and she is minor but after looking into the radiological age, it is evident that she was

major at the relevant time and physical relation was established with her with her own consent.

6. Learned counsel for the applicant further explained the criminal history of the applicant in para 29 of the application i.e. one case, satisfactorily and submitted that on the basis of false allegation, the applicant is languishing in jail since 18.07.2022 and prayed that the applicant may be released on bail.

7. On the other hand, learned counsel for opposite party no.2 opposed the prayer for bail by submitting that as per high school certificate, the age of the prosecutrix is below 15 years and she was minor. He has submitted that school certificate will prevail and it may be inferred at the moment that she was minor at the relevant time and as such her consent has no meaning, thus the case of the present applicant is liable to be rejected.

8. Similarly, learned A.G.A. for the State has also opposed the prayer for bail and has submitted that as per school certificate the age of the prosecutrix is below 15 years and she was minor at the relevant time and the act of the applicant is coming into the purview of rape, thus, the applicant does not deserve the mercy of the Court and is not entitled to be granted bail.

9. Considering the overall facts and circumstances of the case, perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument of learned counsel for the applicant that as per the medical report, the age of the prosecutrix is 18 years, the argument that in the statement of the prosecutrix recorded under Section 164 CrPC, she has deposed that she had gone with the applicant out of her own free will and physical relation was also established with her own consent, the argument that the applicant is languishing in jail since 18.07.2022, I find it to be a fit case for grant of bail.

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

11. Let the applicant- **Suraj Shukla** 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.

12. 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 :- 31.10.2023

Manoj K.