

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11947 of 2023

**Applicant :-** Prince Yadav

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

**Counsel for Applicant :-** Ashok Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh,J.**

1. Heard Shri Ashok Kumar Singh, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA-I for the State and perused the record. Though notice has been served sufficiently upon the complainant but no one has appeared.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.262 of 2023, under Sections-363, 366, 376 I.P.C. and Section 3/4 POCSO Act., P.S.- Rudauli, District Ayodhya.
3. Learned counsel for the applicant has submitted that FIR has been lodged making allegation that his sister aged about 18 years had gone outside for call of nature and did not return back. He further mentioned that applicant used to talk to the prosecutrix and he might have enticed her away. Learned counsel for the applicant submitted that the prosecutrix was recovered after three days and she had gone alone, which is admitted in her statement under Section 161 Cr.P.C in which she stated that she was in love with applicant for the last one year. On being scolded by parents she left her house and had gone from Laluapur by E-rickshaw to Bhelsar and then had gone to Ayodhya, where she lived in a temple for three days and thereafter she was apprehended by the police.
4. Learned counsel has invited attention of this Court towards the statement recorded under Section 164 Cr.P.C. in which prosecutrix has changed her version and had deposed that applicant had enticed her and he committed rape in the field. Thereafter, she was taken to unknown place on four wheeler and she was kept in the room for four days. Learned counsel has submitted that it is a case of consent as the prosecutrix has not raised any alarm either at the place of occurrence or while she was abducted by the applicant and was taken to unknown place on four wheeler. She has also not stated that she was gagged or she was not allowed to raise her alarm. Learned counsel submitted that prosecutrix had refused for medical examination. Learned counsel for the applicant submitted that as per school certificate, the date of birth of the

prosecutrix is 25.07.2005 and she was 17 years ten months at the relevant time. Learned counsel submitted that if ossification test would have conducted, she would have been of 18 years and her brother has already mentioned in the FIR that the age of the prosecutrix is 18 years at the relevant time. The applicant has no criminal history. The applicant is in jail since 09.06.2023.

5. Learned AGA opposed the prayer for bail and submitted that as per school certificate, the prosecutrix is minor therefore, whatever act has been committed by the applicant, the same is coming within the purview of rape; thus the bail of the applicant is liable to be rejected.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking to the argument of consent, argument that prosecutrix has refused medical examination ; argument that there is contradiction between the statements of the prosecutrix under Section 161 and 164 Cr.P.C. thus, in my opinion, I find it to be a fit case for bail.

7. Let the applicant, **Prince Yadav** 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 him 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.

8. 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 :- 7.12.2023**

Pks