

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12093 of 2023

Applicant :- Pawan Kumar

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

Counsel for Applicant :- Dinesh Kr. Sharma, Arshad Hafeez Khan

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned A.G.A. informs that she has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.
2. It is also informed on behalf of the State that opposite party no.2/informant has been served at their end. In this regard, a communication sent by the Additional Inspector of Police Station Dariyabad, District Barabanki to learned A.G.A. has been placed for perusal of this Court, the same is taken on record. Thus, it appears that the informant/complainant has been sufficiently served but he is not represented.
3. Heard Shri Arshad Hafeez Khan, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Pawan Kumar** for grant of bail, in Case Crime No. 90 of 2023, under Sections 363, 366, 376 I.P.C. and Section 5/6 Protection of Children from Sexual Offences Act, Police Station Dariyabad, District Barabanki, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the first information report, which has been lodged by the father of the prosecutrix on 20.03.2023 allegations have been levelled that the applicant has enticed away his daughter, aged about 17 years. However, on the recovery of the prosecutrix her statement was recorded under Section 161 and 164 Cr.P.C. wherein she has not alleged any allegations against the applicant and has stated her age to be of 17 years and 06 months with further statement that she was talking to the applicant, as they came in contact through Facebook messenger and on 12.03.2023 she herself had left her home and met the

applicant and thereafter they had gone to Jabalpur where they solemnized marriage and were living as husband and wife and as she had left her documents at her house when she came to collect the same, she was apprehended.

6. It is further submitted that the date of birth of the prosecutrix as per her IXth Class mark-sheet is 12.08.2005, by which she comes about 17 years, 07 months and 08 days at the date and time of the alleged incident and though, she was not major but was having sufficient intellect to understand her welfare and since she has not imputed any allegation against the applicant in fact no offence has been committed by the applicant, moreso, when they have solemnized marriage and were living as husband and wife.

7. It is next submitted that applicant is languishing in jail in this case since 01.04.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

8. 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.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix on the basis of her educational credentials is coming as 17 years and 07 months at the time of the alleged incident. She has not uttered anything against the applicant in her statement recorded under Section 161 and 164 Cr.P.C. apart from the fact that she has left her home and has solemnized marriage with the applicant and they came together through Facebook messenger and were living as husband and wife. Applicant is languishing in jail in this case since 01.04.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Pawan Kumar** 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.

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

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

14. 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 :- 10.10.2023

Praveen