

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12041 of 2023

Applicant :- Rajkishore

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

Counsel for Applicant :- Surya Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by the State is taken on record.
2. The State in its counter affidavit filed today has also annexed the communication sent by the concerned Police Station with regard to the service on opposite party no.2, thus it is reflected that opposite party no.2 has been sufficiently/ personally serviced, however, he is not represented.
4. Heard Shri Surya Prakash, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- **Rajkishore** for grant of bail, in Case Crime No. 410/2023, under Sections 363, 366, 376 IPC and 3/4 POCSO Act, Police Station Dhaurahra, District Lakhimpur Kheri, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the FIR which has been lodged by the father of the prosecutrix it is alleged that the prosecutrix is aged about 15 years and has been enticed away by the applicant on 11.6.2023 at 11.00 A.M. with the help of other named accused persons. On being recovered, her statement under Sections 161 and 164 Cr.P.C. was recorded, wherein she stated to be in love with the applicant and also that she had accompanied with the applicant with her own wish, will and volition and they have also solemnized marriage in a temple and also in the Court on 14.6.2023 and they also cohabited with her consent.
4. Highlighting the above fact, it is vehemently submitted that the prosecutrix has not alleged any imputation against the applicant and it appears that the prosecutrix was a minor at the

time of the incident. The charge sheet in this case has been submitted.

5. Elaborating further it is submitted that as per the ossification test the age of the prosecutrix has been assessed as 15-17 years at the date and time of the incident, however, as per the entry in the Pariwar Register her date of birth is shown as 1.1.2008. It is vehemently submitted that having regard to the order of precedent provided for determination of age under Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 there is no mention of Pariwar Register and a patent illegality has been committed by the Investigating Officer in relying on the entry of Pariwar Register for determination of the age of the prosecutrix and similar mistake has been committed by the C.W.C Lakhimpur Kheri while as per the age assessed through ossification test, keeping in view two years either side, the prosecutrix appears to be major at the date and time of the incident and since she has not alleged any allegation against the applicant, no offence has been committed by the applicant. He is in jail in this case since 30.6.2023 and he is not having any criminal antecedent. Charge sheet in this has been submitted. There is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

6. Learned A.G.A. on the other hand submits that the applicant is accused of committing heinous offence, therefore he is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted situation that the prosecutrix has not alleged that she was subjected to abduction by the applicant in her statement recorded under Sections 161 and 164 Cr.P.C. rather she stated to accompany the applicant and also to establish sexual relations with her consent. The age of the prosecutrix as per Pariwar Register has been assessed as 15 years 5 months and 10 days while according to ossification test her age has been assessed as 16-17 years. The two years either side are variable with regard to the age assessed through ossification test and having regard to this the prosecutrix may be less than 14 years or of 19 years of age at the date and time of the incident. The age of the prosecutrix may better be adjudicated/ determined by the trial court after providing an opportunity to lead evidence to the parties. The prosecutrix has not made any imputation against the applicant, more so he is not having any criminal history. He is in jail in this case since 30.06.2023. His presence may be secured before the trial court by placing adequate conditions.

8. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

9. Let the applicant- **Rajkishore** involved in the aforesaid case be released on bail on 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.

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

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

12. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 31.10.2023

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