

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13834 of 2022

Applicant :- Rahul

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- S Malik E Ashtar Rizvi, Prashant Dubey, Vidhi Pandya

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the communication sent by the Chief Judicial Magistrate, Faizabad of date 5.1.1023 the opposite party no.2 has been personally served. Thus, opposite party no.2 appears to have been sufficiently served, however, he is not represented.

2. Heard learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Rahul** for grant of bail, in Case Crime No. 0175 of 2022, under Sections 363, 366, 376 IPC, and Section 3/4 POCSO Act, Police Station Kotwali Rudauli, District Ayodhya, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report has been lodged by the father of the prosecutrix on 5.5.2022 at Police Station Kotwali Rudauli, District Ayodhya, alleging therein that the applicant in association with other family members has enticed away his daughter aged about 16 years. After recovery her statement was recorded under Sections 161 and 164 Cr.P.C. wherein she stated to have accompanied the applicant on his bicycle on 2.5.2022 at 11.00 A.M. and also stated that she was talking to the applicant for last six years and at first they had gone to Bhelsar from where they went to Lucknow and from Lucknow to Gujarat by train and when they got an information that a criminal case has been lodged, they returned. It is also stated that she was also taken to the house of the sister of the applicant where, against her wish sexual relations were made by the applicant.

5. Highlighting the above facts, it is vehemently submitted that the prosecutrix was a consenting party as she was having

opportunity to raise alarm, however, she chooses to accompany the applicant and had travelled to various cities with him and did not resist and statement was given by her under Section 164 Cr.P.C. under the influence of her family members.

6. It is also submitted that the prosecutrix in her statement recorded under Section 161 Cr.P.C. has stated her age to be 20 years while in her statement recorded under Section 164 Cr.P.C. she stated her age to be of 16 years. Her age on the basis of educational credentials certificate is 16 years four months and by her ossification test her age has been assessed as 16 years. It is submitted that the age of the prosecutrix is disputed and the same may only be determined/ adjudicated by the trial court after providing an opportunity to lead the evidence to the parties, in the trial.

7. It is further submitted that the applicant is in jail in this case since 26.05.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted and 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.

8. Learned A.G.A. on the other hand submits that the applicant is accused of committing an heinous offence, 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 evident that the age of the prosecutrix as per her educational credentials appears to be about 16 years and as per ossification test her age has been assessed as 16 years. In her statement recorded under Section 161 Cr.P.C. she has disclosed her age to be 20 years. It is submitted by learned counsel for the applicant that the age of the prosecutrix as shown in the School record may not be deemed conclusive and the same is subject matter of the trial. The prosecutrix in her statement recorded under Section 161 Cr.P.C. has not alleged any allegation against the applicant, however in her statement recorded under Section 164 Cr.P.C. she stated that sexual relations were made with her against her consent. However, in both of her statements she admitted that she had travelled to various cities with the applicant and it is submitted by learned counsel for the applicant that the consent of victim may be inferred by her conduct. The applicant is in jail in this case since 26.05.2022 and he is not having any criminal history. His presence may be secured before the trial court by placing adequate conditions.

6. 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**.

7. Let the applicant- **Rahul** 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.

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

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

10. 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 :- 16.11.2023

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