

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14084 of 2022

Applicant :- Guddu Yadav

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

Counsel for Applicant :- Vinod Kumar, Anand Pratap Singh, Suresh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The State along with its counter affidavit is also placed on record a communication sent by the Police Station Itaunja, District Lucknow, whereby it is informed that the opposite party no.2 (complainant) has been sufficiently served. However, no one is present before this Court on behalf of opposite party no.2.

2. Heard Shri Suresh Kumar Yadav, 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- **Guddu Yadav** for grant of bail, in Case Crime No. 79 of 2013, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station Itaunja, District Lucknow, 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 of this case has been lodged by the father of the victim on 25.04.2013 at Police Station Itaunja, District Lucknow alleging therein that the daughter of the informant aged about 17 years had gone missing from 25.04.2013 at 4:00 pm. and it is informed that she was enticed away by the applicant. On the prosecutrix recovered, after four months on 03.09.2013 the statement of the victim was recorded under Section 161 and 164 Cr.P.C. and in her statement recorded under Section 161 Cr.P.C., she admitted to have solemnized marriage with the applicant on 29.04.2013 and also started living as husband and wife and also to the tune that she was taken to Lucknow Bench of the High Court where her affidavit was prepared. In her statement recorded under Section 164 Cr.P.C., she improved the story to the tune that she was

taken from her house by the maternal aunt of the applicant and was taken by the applicant where sexual assault was committed by him as well as by one Kallu.

5. It is vehemently submitted that the prosecutrix had herself accompanied the applicant and they have also solemnized marriage and it was with the free will and wish of the prosecutrix they both had filed a writ petition before this Court bearing Misc. Bench No. 4563 of 2013 and initially vide order dated 31.05.2013 the arrest of the applicant was stayed and the writ petition was finally disposed of on 06.08.2013 by passing certain directions including completion of the investigation within three months and thereafter the applicant could not receive any process of the trial Court and when he got information about issuance of coercive process by the trial Court, he immediately surrendered before the trial Court and move a bail application, which has been unfortunately rejected by the Special Court.

6. It is further submitted that the conduct of the prosecutrix, as shown by her in her statements recorded under Section 161 and 164 Cr.P.C. would itself demonstrate that she was a consenting party. She was aged about 17 years and she was not major but was having sufficient intellect to understand her welfare.

7. While drawing the attention of this Court towards the educational credentials of the prosecutrix, wherein her date of birth is shown as 08.07.1997, it is submitted that the same could not be deemed as conclusive in view of her age shown by her father as 17 years in the first information report and the same is yet to be determined by the trial Court. Applicant is languishing in jail in this case since 28.08.2022 and he is not having any criminal history. He undertakes that he will remain present before the trial Court whenever his presence would be required and would not seek any adjournment when the prosecution witnesses would be in attendance 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 the consent of the prosecutrix is immaterial, as she was minor at the date and time of the incident.

9. Perusal of the record would reveal that the first information report of this case was lodged way back in the year 2013. The age of the prosecutrix is shown in the F.I.R. as 17 years and it is stated that she had left her home herself. The prosecutrix in her

statements recorded under Section 161 and 164 Cr.P.C. admitted to have accompanied the applicant, however, in her statement recorded under Section 164 Cr.P.C., it is alleged that sexual intercourse was being committed by the applicant against consent of the prosecutrix. The defence of the applicant appears to be that the prosecutrix has travelled with the applicant to many cities and had remained with her for a long time, which would be sufficient to infer her consent. It is also the defence of the applicant that the age of the prosecutrix, as shown in the educational credentials of the prosecutrix may not be deemed conclusive in view of the age of the prosecutrix shown by the informant in the F.I.R. i.e. 17 years. Applicant is languishing in jail in this case since 28.08.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

10. Be that as it may, the finer conflicting claims and counter claims with regard to the factual matrix of the case may be better appreciated and adjudicated by the trial Court.

11. Taking into consideration overall factual matrix of the case and keeping in view the fact that no abnormality has been detected in the medical examination report of the prosecutrix as well as in her statements recorded under Section 161 and 164 Cr.P.C., the facility of bail may safely be extended to the applicant. The bail application is thus **allowed**.

12. Let the accused/applicant- **Guddu Yadav** involved in above-mentioned case, be released on bail on his furnishing a personal bond with **two heavy sureties (one of which, the blood relative of the applicant)** in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) **The applicant shall remain present before the trial court on each and every date of such listing especially on the dates on which the prosecution witnesses would be in attendance.**

(ii) **The applicant shall also file an undertaking before the trial Court that he shall not seek any adjournment on the date on which the prosecution witnesses would be in attendance and if by any exigency he is not in a position to appear before the trial Court on such date, he shall instruct his counsel engaged at the level of the trial Court to cross-examine the prosecution witnesses present and also to do all which is required for expeditious disposal of the case and the violation of this condition alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.**

(iii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iv) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

15. 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 :- 28.11.2023

Praveen