

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14147 of 2022

Applicant :- Sawal Singh @ Sajan

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

Counsel for Applicant :- Ambica Tripathi, Ashish Kumar Singh, Surya Prakash

Counsel for Opposite Party :- G.A., Mohak Srivastava

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Surya Prakash, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Mohak Srivastava, learned counsel for the opposite party no.2/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Sawal Singh @ Sajan** for grant of bail, in Case Crime No.0511 of 2021, under Sections 363, 366, 376 I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Atrauli, District Hardoi, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that F.I.R. of this case has been lodged by the father of the prosecutrix on 07.09.2021 at Police Station Atrauli, District Hardoi alleging that on 06.09.2021 at about 03:00pm his daughter aged about 16 years had gone to ease herself, where from she has been enticed away by the applicant. After being recovered, statement of the prosecutrix has been recorded under Section 161 Cr.P.C., wherein she stated to have accompanied the applicant on her own volition and also that she is in a relationship with the applicant for the last three years and had also fled away with him on two occasions earlier as she was in love with him and they have also solemnized marriage. In her statement recorded under Section 164 Cr.P.C., the prosecutrix stated to have enticed away/abducted and also to have confined at some place of Himachal Pradesh and also that the applicant and other accused person were sexually assaulted her.

5. Highlighting the above facts, it is vehemently submitted on

behalf of the applicant that the prosecutrix, as stated by the prosecutrix in her statement recorded under Section 161 Cr.P.C., was in a relationship with the applicant and earlier also she had accompanied the applicant with regard to which an F.I.R. bearing Case Crime No.246 of 2020, under Sections 363, 366, 354, 452 I.P.C. and Section (Chha)/10 of the P.O.C.S.O. Act was registered and in that case finding statements of the prosecutrix not convincing, the applicant was granted bail by a Coordinate Bench of this Court vice order dated 08.12.2020 passed in Criminal Misc. Bail Application No.6832 of 2020 and she has stated correct facts in her statement recorded under Section 161 Cr.P.C., however, under the influence of her family members, she has alleged imputation against the applicant in her statement recorded under Section 164 Cr.P.C. Nothing abnormal or injury of any kind has been found in her medical examination. She at the time of alleged incident as per her educational credentials was almost 16 years and four months while as per ossification test her age has been assessed as 19 years. The applicant is only having one criminal history, which was lodged in connection with the same victim and he has been granted bail by a Coordinate Bench of this Court.

6. It is next submitted that applicant is in jail in this case since 09.12.2021 and the trial has not started yet. Charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

7. 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 having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

8. Shri Mohak Srivastava, learned counsel for the opposite party no.2/complainant vehemently opposes the prayer of bail of the applicant on the ground that the prosecutrix was of the age, where consent could not be given by her, therefore, her consent is immaterial and having regard to the fact that the offence has been repeated by the applicant, 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 date of birth of the prosecutrix as per her educational credentials is shown as 14.05.2005, whereby she comes about 16 years and 4 months, however, her bone age has been determined as 19 years and it is submitted with considerable force that the age of the

prosecutrix recorded in her educational credentials may not be presumed to be conclusive and is yet to be determined by the trial court. The prosecutrix appears to have been earlier enticed away by the applicant and a criminal case was lodged against him and a Coordinate Bench of this Court while granting bail to the applicant in that case had opined that the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. are not convincing. The prosecutrix in this case also has also given contradictory statements under Sections 161 and 164 Cr.P.C., however, the same is required to be appreciated by the trial court at an appropriate stage. For the purpose of bail, I find sufficient force in the submissions made by learned counsel for the applicant more so when the applicant is in jail in this case since 09.12.2021 and the trial has not yet started. Charge-sheet in this case has already been filed. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. Having regard to the overall facts and circumstances of the case and 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- **Sawal Singh @ Sajan** 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 of this Court on the merits of the case.

Order Date :- 2.11.2023

Anupam S/-