

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12771 of 2023

Applicant :- Shobhit Pal

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

Counsel for Applicant :- Arun Kumar Ojha, Pradeep Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As has been observed by this Court in its order dated 31.10.2023, the opposite parties no. 2 and 3 have been sufficiently served, however, they are 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- **Shobhit Pal** for grant of bail, in Case Crime No. 292 of 2023, under Sections 363, 366, 376 IPC & 5/6 POCSO Act, Police Station Unchahar, District Raibareli, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The FIR of this case has been lodged by the mother of the prosecutrix on 17.6.2023 alleging therein that on 2.6.2023 at about 5.00 p.m. when the informant had gone to her agricultural field, her daughter had left her home and could not be traced. However, after 4 days she was informed by the applicant that the daughter is residing with him. The prosecutrix was however, recovered and her statements under Sections 161 and 164 Cr.P.C. was recorded, wherein she stated to have left her home on her own on 2.6.2023 and had gone to Delhi, from where she had made a phone call to the applicant and they together had gone to Rajasthan and thereafter to Delhi wherein they were living in a rented accommodation and after that they had come to Hardoi, where they solemnized marriage in a temple and then went to Noida, where they were living as husband and wife. However, when the FIR was lodged in the instant case against the applicant, they returned.

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

date of birth of the prosecutrix as per her educational credentials is 1.1.2006 whereby she comes about 17 years and 5 months at the date and time of the incident and though she was not major at the date and time of the incident but appears to be having sufficient intellect, where she can understand her welfare and nature of the act and it was she who had called the applicant to Delhi and they have traveled to many cities and have also solemnized marriage. Therefore, when the prosecutrix was at the verge of becoming major, no offence in fact has been committed by the applicant more so, when the prosecutrix was a consenting party. The applicant is in jail in this case since 17.07.2023 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.

6. Learned A.G.A. on the other hand submits that the applicant is accused of committing an heinous offence and consent of the prosecutrix is immaterial as she was not major at time of the incident, therefore, he is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it is reflected that the date of birth of the prosecutrix is about 01.01.2006, whereby she is coming as of 17 years and 5 months at the date and time of the incident. The age of the applicant is also shown as 24 years. The statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. would give an impression that it was she who had left her home alone and initially had gone to Delhi from where she made a phone call to the applicant and it was on the phone call made by the prosecutrix, the applicant had gone to Delhi and they have travelled to many cities and ultimately solemnized marriage at a temple in Hardoi and thereafter they returned to home. Significantly, the prosecutrix in her statement recorded under Section 164 Cr.P.C. has stated that as she had not attained the age of 18 years, she will wait at the house of her parents and after becoming major, she will solemnize marriage with the applicant. The applicant is in jail in this case since 17.07.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. 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- **Shobhit Pal** 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 :- 20.12.2023

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