

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12623 of 2023

Applicant :- Sharda Prasad Upadhya

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

Counsel for Applicant :- Brijesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Shri Akhand Pratap Singh, learned Advocate has filed his 'Vakalatnama' along with short counter affidavit on behalf of the complainant, the same is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Akhand Pratap Singh, learned counsel for the complainant and perused the record.
4. This bail application has been moved by the accused/applicant- **Sharda Prasad Upadhya** for grant of bail, in Case Crime No.444 of 2022, under Sections 363, 366, 376 I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Maharajganj, District Ayodhya, during trial.
5. 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.
6. It is further submitted that in the F.I.R., which has been lodged by the maternal grand father of the prosecutrix, it is stated that the prosecutrix was not found on her bed in the night of 30.11.2022 and it is apprehended that the applicant, who had come to the house of the informant on 25.11.2022 and had left on 28.11.2022, had enticed away her. On 03.03.2023, the prosecutrix was recovered and her statement was recorded under Sections 161 and 164 Cr.P.C., wherein she has not alleged any imputation against the applicant rather she stated that she had gone with the applicant with her own volition and she was not abducted or kidnapped and also they have solemnized

marriage and are living as husband and wife and nothing wrong has been done with her.

7. It is further submitted that the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. had stated her age about 18 years and 17 years respectively and as per her educational credentials, her age is coming as 17 years and 11 months at the time of alleged incident and since she has not alleged any imputation against the applicant, in fact no offence has been committed by the applicant as the prosecutrix appears to be major and was a consenting party.

8. It is also submitted that statement of the prosecutrix has also been recorded before the trial court as P.W.-3, wherein also she has not imputed any allegation against the applicant and have also denied her statement recorded under Section 161 Cr.P.C. and with regard to statement recorded under Section 164 Cr.P.C., she stated that the same was given under the pressure of the police personnel and she has categorically denied to have established sexual relations.

9. It is next submitted that applicant is in jail in this case since 04.03.2023 and he is not having any criminal history, 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.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant is already married and in despite of the same, he had enticed away the prosecutrix, who was of very tender age and solemnization of marriage between them may not be recognized by the law as the same is *void ab initio* and in this regard attention of this Court has been drawn towards the affidavit enclosed with this bail application, which has been sworn by first wife of the applicant in order to show that enticing away the prosecutrix is highly immoral and thus the applicant is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

11. Shri Akhand Pratap Singh, learned counsel for the complainant submits that the prosecutrix has not supported the allegations of the F.I.R. in her statement recorded under Sections 161 and 164 Cr.P.C. nor she has stated anything against the applicant in her statement recorded before the trial court. The informant has also been declared hostile. Thus he is under instructions not to oppose the plea of bail of the applicant.

12. 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 11.12.2004. The incident is shown to have occurred on 28.11.2022. F.I.R. with regard to the same has been lodged on 30.11.2022. Thus at the relevant time, the prosecutrix was aged about 17 years and 11 months and thus she was almost major and was capable of making decisions. She has not imputed any allegations against the applicant in her statement recorded under Sections 161 and 164 Cr.P.C. as well as before the trial court rather she categorically denied to have established any sexual relations with the applicant. So far as the grievance of the prosecution with regard to the fact that the applicant is related to the prosecutrix within the prohibitory degrees is concerned, it is to be recalled that act of the applicant may be termed as immoral but since no allegation has been levelled by the prosecutrix and her evidence is akin to the evidence of an injured witness and keeping in view that the complainant is not having any objection for grant of bail to the applicant, a case of bail is made out in favour of the applicant subject to appreciation of evidence by the trial court, as the trial court would be free to appreciate the evidence independently without being guided by any observation made by this Court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 04.03.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the accused/applicant- **Sharda Prasad Upadhyia** 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.

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

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

17. 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 :- 28.10.2023

Anupam S/-