

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12784 of 2023

Applicant :- Subedar @ Surendra Kumar Pal

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

Counsel for Applicant :- Suresh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by the State and rejoinder affidavit filed on behalf of the applicant are taken on record.

2. Learned A.G.A. informs that though counter affidavit has been filed in this case, however, having regard to the direction given by this Court on 31.10.2023 proof of service on opposite party no.2 could not be filed due to inadvertent mistake. At this juncture, a communication sent by the Police Station Ram Nagar, District Barabanki with regard to service on opposite party no.2 is placed for perusal of this Court and the same is taken on record. The communication sent by the Police Station Ram Nagar, District Barabanki clearly demonstrates that opposite party no.2 has been sufficiently served, however, he is not represented.

3. 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.

4. This bail application has been moved by the accused/applicant- **Subedar @ Surendra Kumar Pal** for grant of bail, in Case Crime No.456 of 2023, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the P.O.C.S.O. Act, Police Station Ram Nagar, District Barabanki, 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 F.I.R. of this case has been lodged by the father of the prosecutrix on 12.08.2023 alleging therein that his daughter aged about 16 years has been enticed away by the applicant on 11.08.2023 at about 12:00am. in the night and

she while leaving the home had also taken some jewellery and Rs.10,000/- cash. The prosecutrix was recovered and her statements under Sections 161 and 164 Cr.P.C. was recorded, wherein she did not impute any allegation against the applicant and has stated that on 11.08.2023 she was scolded and assaulted by her parents and that is why she had left her home with her own volition and met with the applicant, who was known to her from before, and had gone to Delhi, where they solemnized marriage and were residing in a rented accommodation as husband and wife.

7. While referring to the statement of the prosecutrix recorded under Section 164 Cr.P.C., it is vehemently submitted on behalf of the applicant that the prosecutrix has admitted in categorical terms that she was in love with the applicant for the last one year and she was being physically assaulted by her parents and she had accompanied the applicant on her own volition and they have also solemnized marriage and were living as husband and wife.

8. While drawing attention of this Court towards the transfer certificate of Class-8th filed by the State with its counter affidavit, it is vehemently submitted that date of birth of the prosecutrix shown in this document may not be termed as conclusive in absence of any proof on the basis of which, date of birth of the prosecutrix might have been recorded in the school record and the same is yet to be finally adjudicated by the trial court after providing an opportunity to lead the evidence to the parties.

9. It is further submitted that even if the case of the prosecution is taken on its face, the age of the prosecutrix at the relevant date and time was about 16 years and since she had not imputed any allegation against the applicant and has categorically stated that she had accompanied the applicant on her own volition and they have also solemnized marriage and were living as husband and wife and the medical report of the prosecutrix is also clean, no offence in fact has been committed by the applicant as though the prosecutrix was not major, but she was having sufficient intellect to understand the consequences of her act.

10. It is next submitted that applicant is in jail in this case since 07.09.2023 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.

11. 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.

12. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix was admittedly not major at the date and time of the alleged incident and her age on the basis of her date of birth recorded in the school record has been assessed as 16 years. The defence of the applicant appears to be that the age of the prosecutrix recorded in the school in absence of any proof may not be termed as conclusive and the same is yet to be finally adjudicated by the trial court during the course of trial. It is also an admitted fact that the prosecutrix has not imputed any allegation of any kind against the applicant and admitted that she had left her home herself as she was scolded and assaulted by her parents and it was she, who called the applicant and had accompanied him on her own volition and she also solemnized marriage with the applicant and they were living as husband and wife. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 07.09.2023 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- **Subedar @ Surendra Kumar Pal** 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 :- 21.11.2023

Anupam S/-