

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14768 of 2022

Applicant :- Saif

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

Counsel for Applicant :- Vikas Misra, Jag Prasad Yadav, Manoj Kumar Singh, Sheikh Mohammad Ali

Counsel for Opposite Party :- G.A., Anurag Shukla, Durgesh Kumar Pathak

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed on behalf of the State is taken on record.
2. Heard Shri Manoj Kumar Singh, learned counsel for the accused-applicant, Shri Durgesh Kumar Pathak, learned counsel appearing for the opposite party no.2 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- **Saif** for grant of bail, in Case Crime No. 285 of 2022, under Sections 363, 376, 506 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station Hardi, District Bahraich, 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 uncle of the prosecutrix on 10.08.2022 at Police Station Hardi, District Bahraich alleging therein that the prosecutrix has enticed away by the applicant, as he had sent her at the house of his relatives and she is missing since the intervening night of 09/10.08.2022. The prosecutrix is, however, recovered on 17.08.2022 and her statement under Section 161 Cr.P.C. was recorded, wherein she admitted to be in a relationship with the applicant and in the intervening night of 09/10.08.2022 she stated to have called the applicant at a 'petrol pump' situated near her house and accompanied him on his motorcycle at first to Nanpara and thereafter to Delhi and Mumbai where they resided as husband and wife.
5. It is vehemently submitted that in the statement of the prosecutrix recorded under Section 161 Cr.P.C. she has not levelled any allegation against the applicant, however, in her

statement recorded under Section 164 Cr.P.C. she alleged to have been abducted by the applicant. However, in categorical terms she has stated that nothing wrong has been done by the applicant with her and it is in this background, it is vehemently submitted by learned counsel for the applicant that in absence of any evidence of sexual assault, charge sheet under Section 376 I.P.C. as well as under relevant provisions of the POCSO Act could not be filed and the investigating officer has committed serious illegality.

6. It is also submitted that the age of the prosecutrix as per her educational credentials is 17 years, 03 months and 13 days and though, she was not major but was having sufficient intellect to understand her welfare. It is further submitted that in the medical examination report of the prosecutrix nothing abnormal has been found and her pathological report are also clean.

7. It is next submitted that applicant is languishing in jail in this case since 18.08.2022 and he is not having any criminal history. Charge sheet in this case has already been filed 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, therefore, he is not entitled to be released on bail.

9. Shri Durgesh Kumar Pathak, learned counsel appearing for the opposite party no.2 vehemently submits that the consent of the prosecutrix is immaterial as she was not major, moreover, in the statement given by her to the doctor while she was under medical examination, she has stated that the applicant had committed sexual assault on her when they were returning to home and, thus, applicant is not entitled to be released on bail.

10. Perusal of the record would reveal that the prosecutrix in her statement recorded under Section 161 Cr.P.C. has not alleged any imputation against the applicant so far as the commission of rape is concerned. She also admitted to be in love with him. In her statement under Section 164 Cr.P.C, she only stated about abduction committed by the applicant. However, in this statement also she has not stated anything about the commission of sexual assault. It is in this background, it is vehemently submitted that the investigating officer has committed serious illegality in submitting charge sheet under Section 376 I.P.C. as well as under the relevant provisions of the POCSO Act. Applicant is languishing in jail in this case since 18.08.2022 without any criminal antecedents. Charge

sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

11. 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**.

12. Let the accused/applicant- **Saif** 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.

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 :- 16.11.2023

Praveen