

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14685 of 2022

Applicant :- Gyan Chandra

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

Counsel for Applicant :- Anil Kumar Yadav, Anshuman Singh, Manoj Kumar, Pradeep Kumar

Counsel for Opposite Party :- G.A., Kashi Ram, Prem Chandra Chauhan

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Shri Kashi Ram, learned counsel for complainant as well as Shri Avishesh Kumar Singh, learned A.G.A. for the State and perused the record.
2. This bail application has been filed seeking release of accused/applicant **Gyan Chandra** on bail, in Case Crime No. 83 of 2022, under Sections 363, 366, 376, 342 & 323 I.P.C. and 3/4 Protection of Children From Sexual Offences Act 2012, Police Station Rampur Kala, District Sitapur.
3. Learned counsel for the applicant submitted that the F.I.R. has been lodged by the father of the prosecutrix alleging therein that the said incident took place on 25.03.2022, at about 1 O'Clock when his daughter had gone outside for nature's call and on the basis of doubt, he lodged the First Information Report against the applicant and two other co-accused. Learned counsel for applicant further submitted that the statement of prosecutrix under Section 164 Cr.P.C was recorded wherein she has admitted that on 25.03.2022 at about 1 O'Clock, she had gone outside for the call of nature, and the applicant caught hold of her, took her to his house and made her captive for two days, thereafter, the applicant established physical relation with the prosecutrix and the family members of the applicant did not allow the prosecutrix to go outside the house.
4. Learned counsel for the applicant submitted that as per the medical report, the age of prosecutrix is about 17 years and the doctor has given opinion in medical report that sexual offence cannot be ruled out because admittedly, it is a case of consent between the parties. He further submitted that it cannot be believed that the applicant

would commit rape with the prosecutrix in his own house and that too in the presence of own his family members. He further submitted that the said incident took place on 25.03.2023 and the F.I.R of missing was lodged on 27.03.2022, levelling allegation that the daughter of complainant has been enticed away by the applicant and other co-accused. Learned counsel for applicant further submitted that at the most, it is a case of consent and the applicant has been falsely implicated in the present case as both the families belong to the same village.

5. Learned counsel further requested that since it is a case of consent, two years upper age limit benefit may be granted and it may be inferred that the prosecutrix was major at the relevant time. He further submitted that the applicant is innocent and has been falsely implicated in this case and he has no criminal history and is languishing in jail since 30.03.2022.

6. Learned A.G.A. has opposed the prayer for grant of bail and has submitted that since the prosecutrix was minor at the relevant time and even if it is a case of consent, the consent of a minor has no meaning in law, therefore, bail is liable to be rejected.

7. Learned counsel for complainant has opposed the prayer for grant of bail and has argued that the prosecutrix was minor at the relevant time and as per her statement under Section 164 Cr.P.C, allegation of abduction and rape has been levelled against the applicant. He further submitted that the medical report is supporting the prosecution case as the doctor has given his opinion that sexual offence cannot be ruled out, therefore, bail is liable to be rejected.

8. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that it is a case of consent, the argument that in the F.I.R, the complainant has not levelled allegation of rape against the applicant, the argument that as per statement under Section 164 Cr.P.C, the prosecutrix has levelled allegation that the applicant committed rape in his house and this fact is hard to believe that the applicant would commit rape in his own house in the presence of his family members, I find it to be a fit case for grant of bail.

9. Accordingly, the bail application is **allowed**.

10. Let the accused/applicant **Gyan Chandra** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties each in the

like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

11. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 28.11.2023

DiVYa/Rajneesh