

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12798 of 2023

Applicant :- Shyam Kumar

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

Counsel for Applicant :- Dinesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Shyam Kumar** for grant of bail, in Case Crime No. 318 of 2023, under Sections 363, 366, 376 IPC & Sections 3/4 of POCSO Act, Police Station Dhaurhara, District Kheri, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that the FIR of this case has been lodged by the brother of the victim against the applicant and his family members alleging that in the intervening night of 15-16.5.2023, her sister aged about 16 years had been enticed away by the applicant with the help of his family members and she had also taken some jewellery. After recovery of the prosecutrix/victim, her statements were recorded under Sections 161 & 164 CrPC wherein she stated to have accompanied the applicant on her own volition and also that they had gone to Noida where they solemnized marriage and were living as husband and wife and sexual relations between them were established with her consent.
5. Highlighting the above facts, it is vehemently submitted that the prosecutrix/victim has not levelled any allegation against the applicant and stated to have accompanied him with her free wish, will and consent and also that sexual relations were established with her own consent. The age of the prosecutrix/victim has been assessed as 15-17 years through ossification process and having regard to the two years

variables which may be added either side, the prosecutrix/victim appears to be major at the date and time of the incident and since she has not stated anything against the applicant, no offence in fact has been committed by him.

6. It is further submitted that the applicant is in jail in this case since 20.6.2023 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed 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.

7. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

8. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix/victim has been assessed between 15-17 years through ossification process. Thus having regard to the two years variables either side, the prosecutrix/victim may be of either 13 years or 19 years at the date and time of the incident, subject to the evidence which may be led before the trial court. Admittedly, she has not alleged any imputation against the applicant. The applicant is in jail in this case since 20.6.2023 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

9. 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**.

10. Let the applicant- **Shyam Kumar** 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.

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

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

13. 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 :- 7.12.2023

Shravan