

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12941 of 2023

Applicant :- Deenanath

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

Counsel for Applicant :- Ashish Raman Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State is taken on record.
2. Heard Shri Ashish Raman Mishra, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
3. The State with its counter affidavit has enclosed a communication sent by the Police Station Fakharpur, District Bahraich, thus opposite party no.2 appears to have been sufficiently served but he is not represented.
4. This bail application has been moved by the accused/applicant- **Deenanath** for grant of bail, in Case Crime No. 301 of 2023, under Sections 363, 366, 376 (3) IPC, 3/4 (2) of POCSO Act, Police Station Fakharpur, District Bahraich, during trial.
5. 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 father of the prosecutrix alleging therein that his daughter aged about 15 years has been enticed away by the applicant. After about 30 days the statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C. wherein she stated her age to be 18 years and also that she was in love with the applicant for a long time and on 9.7.2023 they have solemnized marriage in a temple and thereafter had gone to Mumbai where they remained for 15 days and thereafter to Ambala (Punjab) where they were living as husband and wife however, from there they have been apprehended by the father of the prosecutrix with the help of police. In her statement recorded under Section 164 Cr.P.C, similar statement has been given by her with the modification that it is specifically stated by her that sexual relations between them were established with her

consent.

6. Learned counsel for the applicant submits that the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has not alleged any allegations against the applicant and has categorically stated that to have cohabited with her free wish and will and also accompanied the applicant with her consent.

7. It is vehemently submitted that the prosecutrix has stated her age to be of 18 years, however, as per her educational credentials / school leaving certificate her date of birth is shown as 3.3.2008, whereby she appears to be of very tender age, however, relying on the law laid down by the Hon'ble Supreme Court in the case of ***P. Yuvaprakash Vs. State Rep. by Inspector of Police*** reported in 2023 SCC OnLine SC 846, it is submitted that the school leaving certificate may not be the basis of ascertaining/ assessing the age of the prosecutrix. Reference has been made to paragraph 19 of the above mentioned Law Report.

8. It is also submitted that there is no basis disclosed in the whole of the case diary or in the counter affidavit filed by the State which may suggest the basis on which the date of birth of the prosecutrix is recorded in the school record and in absence of any such basis the date of birth recorded in the school may not be termed as conclusive and age of the prosecutrix is yet to be finally determined by the trial court.

9. It is further submitted that the applicant is in jail in this case since 14.08.2023 and he is not having any criminal antecedent. Charge sheet in this case 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.

10. Learned A.G.A., however, opposes the prayer for bail of the applicant on the ground that sexual assault has been committed with a girl of a very tender age.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that when the prosecutrix was recovered her statements under Sections 161 and 164 Cr.P.C. were recorded but she has chosen not to implicate any allegations against the applicant. She has stated that she was in love with the applicant, left her home with her own volition and have cohabited with the applicant with her free consent. Charge sheet appears to have been filed in this case only on the basis that the prosecutrix was a minor. Various submissions have

been raised by learned counsel for the applicant by citing **P. Yuvaprakash (supra)** that the school leaving certificate may not be the sole basis for adjudication of the date of birth or age of the prosecutrix.

12. Without commenting anything on the merits and demerits of the case suffice is to say that at this stage having regard to statement recorded under Sections 161 and 164 Cr.P.C. and also the age of the prosecutrix the case of bail is made out against the applicant. The bail application moved on behalf of the applicant is, thus, **allowed**.

13. Let the applicant- **Deenanath** 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.

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

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

16. 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 :- 23.11.2023

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