

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12872 of 2023

Applicant :- Subham Jaiswal

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

Counsel for Applicant :- Durga Prasad Shukla, Anurag.S.Kaalesh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. State along with its counter affidavit has enclosed as Annexure No. C.A.1 the information given to opposite party no.2 with regard to the pendency of the instant bail application. Thus, the opposite party no.2 appears to have been sufficiently served, however, he is not represented before this Court.

2. Heard Shri Anurag.S.Kaalesh, learned counsel for the accused/applicant 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- **Shubham Jaiswal** for grant of bail, in Case Crime No. 0155/2023, under Sections 363, 366, 376 IPC & 5/6 of POCSO Act, 2012, Police Station Lonikatra, Barabanki, 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 father of the prosecutrix on 11.6.2023 pertaining to the fact that on 05.06.2023 at 11.00 a.m. his daughter aged about 15 years had left her home and could not be traced. It is also stated that earlier also on many occasions, the victim had left her home on her own. The prosecutrix is shown to have been recovered on 14.6.2023 while shown in the company of the applicant and her statement recorded under Sections 161 and 164 Cr.P.C. was recorded wherein she had stated to accompany the applicant on her own and also sexual relations were established between them with her consent.

5. Highlighting the above fact, it is vehemently submitted that the prosecutrix/ victim has not alleged any allegation against the applicant in her statements recorded under Sections 161 and

164 Cr.P.C. and has specifically stated that she had accompanied him on her own and sexual relations were also established with her free wish, will and consent.

6. It is further submitted that no abnormality or injury of any kind has been found in the medical examination of the prosecutrix, thus in support of making of sexual relations there is no evidence except the statement of the prosecutrix/ victim.

7. It is further submitted that the statement given by the prosecutrix/ victim under Sections 161 and 164 Cr.P.C. could not be believed as it is, in the background of the statement of the informant as well as one Pinki (friend of the victim).

8. Elaborating further, it is submitted that in the FIR it has been mentioned by the informant that the prosecutrix had earlier also left her home on many occasions and have returned and prior to 5.6.2023, on 3.6.2023 she had also left her home and had gone to the house of one Renu Tiwari, from where she was recovered by the informant. It is also highlighted that a friend of the victim Ms. Pinki, whose statement has been recorded by the Investigating Officer, has categorically stated that on 5.6.2023 the prosecutrix had come to her home and had called on a mobile number which was later on identified as of one Vishal and it is on this score, it is vehemently submitted that the applicant has been falsely implicated in this case and the real culprit has been screened by the Investigation Officer. In alternate, it is submitted that apart from the tender age of the applicant there is nothing against the applicant. Prosecutrix's date of birth i.e. 15.6.2008 recorded in the school records could also not be taken as conclusive as no basis has been shown therein on the basis of which this date of birth has been recorded in the school. The applicant is in jail in this case since 14.06.2023 and he is not having any criminal antecedent. 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.

9. Learned A.G.A. on the other hand submits that the applicant is accused of committing an heinous offence, therefore, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix was 15 years at the date and time of the incident. Admittedly she has not imputed any allegations against the applicant and it is on account of tender age of the prosecutrix, the charge sheet appears to have been filed as she is believed to be of the age when she cannot give any consent. The age of the prosecutrix

has been doubted by learned counsel for the applicant on the ground that no basis has been shown on the basis of which the age of the prosecutrix has been recorded in the school. The medical report of the prosecutrix is clean. The statement of informant as well as one independent witness (friend of the victim) Ms. Pinki has been highlighted by learned counsel for the applicant in order to show that the prosecutrix/ victim is in a habit of leaving her home as on earlier occasions also she had left her home. The statement of Pinki was also highlighted in order to show that on the fateful day, the victim had made a phone call to one Vishal and thereafter had left the home of Pinki, however no clarification has been given with regard to Vishal on whose mobile phone the deceased has made a phone call on 5.6.2023.

11. Be that as it may, the trial court would better be entrusted to appreciate the evidence made available before it.

12. Having regard to all the facts and circumstances of the case, specifically the statement of the informant and of one Ms. Pinki and also keeping an eye on the fact that the applicant is in prison in this case since 14.6.2023 and is not having any criminal history, the facility of bail may be extended to the applicant. The bail application moved on behalf of the applicant is, thus, **allowed**.

13. Let the applicant- **Subham Jaiswal** 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 :- 19.12.2023

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