

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12876 of 2023

Applicant :- Ajay Kumar Verma

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

Counsel for Applicant :- Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that opposite party no.2 has been sufficiently served at their end and for this purpose a copy of the report submitted by the concerned police station has been placed before this Court for perusal, the same is taken on record. However, the opposite party no.2 is not represented.

2. Heard Shri Rajesh Kumar Singh, 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- **Ajay Kumar Verma** for grant of bail, in Case Crime No.77 of 2023, under Sections 363, 366, 376 I.P.C. and 5J(ii), 6 of the P.O.C.S.O. Act, Police Station Leelapur, District Pratapgarh, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

5. It is further submitted that F.I.R. of this case has been lodged by the father of the prosecutrix alleging therein that on 21.03.2023 at about 10:00am. his daughter aged about 16 years had gone to school but did not return. On recovery of the victim, her statements under Section 161 and 164 Cr.P.C. were recorded, wherein she has not levelled any kind of allegation against the applicant.

6. It is vehemently submitted on behalf of the applicant that the investigating officer without there being any material or evidence has submitted charge sheet as the prosecutrix had not alleged any kind of allegation against the applicant in her statements recorded under Section 161 and 164 Cr.P.C.

7. It is further submitted that though the prosecutrix was found pregnant by 7 weeks, however, the pregnancy was terminated by her family members and same, in absence of any allegation against the applicant may not be attributed to the applicant.

8. It is next submitted that applicant is in jail in this case since 10.06.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. 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 having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R., the applicant was not named as the same was lodged against unknown person. In the statement of the prosecutrix recorded under Section 161 Cr.P.C., she stated to have left her home with her free will and had not alleged any allegation against the applicant. Similar is the condition of the statement of the prosecutrix recorded under Section 164 Cr.P.C., wherein though allegations have been levelled against Shitla Prasad and Rajesh, but there is no iota of allegation against the applicant and in fact the prosecutrix has not even taken the name of the applicant, in her statements recorded under Section 161 and 164 Cr.P.C. What could be assessed at this stage and has also been highlighted by the Special Court (P.O.C.S.O. Act), Pratapgarh in the rejection order of the applicant that on the basis of information given to the Doctor and before the C.W.C. by the prosecutrix, the investigating officer has submitted charge sheet. In the considered opinion of this Court, there is no restriction so far as the recording of the repeated statements under Section 164 Cr.P.C. is concerned. The only rider is that the statement under Section 164 Cr.P.C. could only be recorded, if the same is sponsored by the investigating agency. However, in this case, investigating agency has not chosen to record subsequent statement of the prosecutrix under Section 164 Cr.P.C., before a magistrate. In this background, it is vehemently submitted on behalf of the applicant that charge sheet has been submitted on the basis of hearsay evidence as the information given by the prosecutrix to the Doctor or before the C.W.C. may not be proved in the court of law. It is also recalled that this Court had an occasion to interact with the prosecutrix on 07.11.2023 and she informed that she is still willing to marry

the applicant and it is also informed by learned counsel for the applicant that families of the applicant and the prosecutrix are now willing to solemnize their marriage. The age of the prosecutrix at the time of alleged incident was about 15 years and 8 months. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 10.06.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and 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- **Ajay Kumar Verma** 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 of this Court on the merits of the case.

Order Date :- 17.11.2023

Anupam S/-