

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15005 of 2022

Applicant :- Sahul

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

Counsel for Applicant :- Akhilesha Nand Pandey, Arun Kumar, Vineet Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.

Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant-**Sahul** for grant of bail, in Case Crime No.150 of 2022, under Sections 376, 313, 323, 504, 506 I.P.C., Police Station-Jahangirganj, District - Ambedkar Nagar, during trial.

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. The F.I.R. of the present case has been lodged by the victim herself on 9.7.2022 at Police Station-Jahangirganj, District - Ambedkar Nagar alleging therein that for the last three years before lodging of the F.I.R. the prosecutrix was cohabiting with the applicant and she also became pregnant twice. However, the fetus was aborted and the sexual assault was being regularly committed by the applicant and when she refused to abide by his directions, she was assaulted by the applicant and now the applicant is intimidating the victim. The statement of the prosecutrix was recorded under Section 161 and 164 Cr.P.C. wherein she reiterated her relationship with the applicant for the last three years and also of becoming pregnant twice and in her statement recorded under Section 164 Cr.P.C. she added that they used to cohabit at the back of their house and she was once caught by her brother and she was scolded by him (her brother).

Highlighting the above factual matrix, it is vehemently submitted on behalf of the applicant that the prosecutrix has

stated her age to be of 19 years in her statement recorded under Section 161 and 164 Cr.P.C. and as per her educational credentials the date of birth of the prosecutrix is shown as 10.10.2001 and thus, she was major at the date and time of the alleged incident and she was admittedly a consenting party, No offence, in fact, is committed by the applicant.

It is further submitted that no abnormality or any injury etc. has been found in the medical examination report of the prosecutrix.

It is next submitted that applicant is in jail in this case since 10.7.2022 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.

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.

Having heard learned counsel for the parties and having perused the record, it reveals that as per educational credential the prosecutrix was major at the date and time of lodging of the first information report. In the first information report as well as in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. cohabitation for the last three years from before lodging of the F.I.R. has been alleged. It has also been stated by the prosecutrix in her statement recorded under Section 164 Cr.P.C. that they used to cohabit at a place situated behind the back of their house and she was once caught by her brother and she was also scolded and it is in this background it has vehemently been submitted by the learned counsel for the applicant that having regard to the fact that the prosecutrix was major and was consenting party no offence, in fact, has been committed.

Charge-sheet in this case has already been filed. Applicant is in jail in this case since 10.7.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

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**.

Let the accused/applicant- **Sahul** 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.

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

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

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 :- 28.10.2023

Anuj Singh