

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13638 of 2023

Applicant :- Bheem Saroj

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

Counsel for Applicant :- Rajnish Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date/complete case diary and charge sheet has also been submitted.
2. Short counter affidavit along with 'vakalatnama' has been filed on behalf of the opposite party no.2, which are taken on record.
3. Heard Shri Rajnish Ojha, learned counsel for the accused-applicant, Shri Hemant Kumar Pandey, learned counsel appearing for the opposite party no.2 (complainant) as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Bheem Saroj** for grant of bail, in Case Crime No. 332 of 2021, under Sections 363, 366, 376(3) I.P.C. and Section 5(J)(ii)/6 of the Protection of Children from Sexual Offences Act, Police Station Kunda, District Pratapgarh, 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 mother of the prosecutrix on 06.10.2021 at Police Station Kunda, District Pratapgarh alleging therein that her daughter, aged about 15 years has been enticed away by the applicant and while leaving her home she had also taken with her some amount of cash as well as some documents. After many days of lodging of the F.I.R., the prosecutrix was recovered and her statement under Section 161 and 164 Cr.P.C. was recorded, wherein she stated to be in love with the applicant and also that she had accompanied him and had solemnized marriage and they were living as husband and wife and by that wedlock they are also blessed with a baby boy who is aged about one year

now. It is also stated by her that she wants to live with her husband (applicant) and nothing wrong has been done with her by the applicant.

6. Highlighting the above facts, it is vehemently submitted that the age of the prosecutrix as per her educational credentials was about 17 years, while the age assessed through ossification process has been found to be of 18 years and, therefore, in all probability the prosecutrix was major at the date and time of the incident and since she has not alleged anything against the applicant, in fact no offence has been committed by the applicant.

7. It is further submitted that the prosecutrix is now living with her in-laws in their house and since she has also been blessed with a baby boy, further detention of the applicant in jail may ruin the matrimonial prospects of the victim. Applicant is languishing in jail in this case since 16.09.2023 and he is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. 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, therefore, he is not entitled to be released on bail.

9. Shri Hemant Kumar Pandey, learned counsel appearing for the opposite party no.2 (complainant) submits that he is making a statement under instructions given by the complainant/opposite party no.2 that the prosecutrix, who is major now, is living in her in-laws house and she has not having any objection if the facility of bail is granted to the applicant.

10. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted fact that the prosecutrix after being recovered had not alleged any imputation against the applicant. It also appears to be admitted that they had solemnized marriage. It is also admitted that they have also blessed with a baby boy and a statement has been made by learned counsel for the opposite party no.2 that the prosecutrix is not having any objection if the facility of bail is extended to the applicant, moreso, when she is living in her in-laws house with her son. Applicant is languishing in jail in this case since 16.09.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

11. 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- **Bheem Saroj** 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 on the merits of the case.

Order Date :- 20.11.2023

Praveen