

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13755 of 2023

Applicant :- Rohit Alias Mathayi

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And Others

Counsel for Applicant :- Gulam Mustafa

Counsel for Opposite Party :- G.A., Mukesh Kumar

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the complainant/opposite party no.2 is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
3. Heard Shri Gulam Mustafa, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Mukesh Kumar, learned counsel for the complainant/opposite party no.2 and perused the record.
4. This bail application has been moved by the accused/applicant- **Rohit Alias Mathayi** for grant of bail, in Case Crime No.45 of 2023, under Sections 363, 366, 376 I.P.C. & 3/4 of the P.O.C.S.O. Act, Police Station Beeghapur, District Unnao, during trial.
5. 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.
6. It is further submitted that F.I.R. of this case has been lodged by the mother of the prosecutrix on 06.04.2023 stating therein that her daughter aged about 16 years had left her home and it is apprehended that she has been enticed away by the applicant, however, on the recovery of the prosecutrix, her statement under Sections 161 and 164 Cr.P.C. was recorded, wherein she stated that she is educated upto 12th Standard and for the last one and a half year, she is having love affair with the applicant, however, her family members were not happy with her relationship with the applicant and they were intending to solemnize her marriage somewhere else, it is on account of this,

she left her home on 04.04.2023 with her free wish and volition and had gone to Unnao with the applicant and thereafter to Delhi, where they resided for about 2 months and also solemnized marriage on 29.04.2023 and were living as husband and wife and cohabitation between them has also been taken place with her free wish and consent.

7. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the prosecutrix has not alleged any allegation against the applicant and has categorically stated to have accompanied him with her free wish and volition and sexual relations between them have also established with her consent and in the medical report of the prosecutrix, no abnormality or injury of any kind has been found.

8. It is further submitted that age of the prosecutrix has been shown as 16 years in the F.I.R., however, in her statements recorded under Section 161 and 164 Cr.P.C., she has stated her age to be of 17 years, however, as per her educational credentials her date of birth is shown as 15.05.2007 by which she is coming about 15 years and 11 months at the date and time of the alleged incident, however, having regard to the fact that no basis has been shown of recording of her date of birth in the school record, the date of birth shown in the school record of the prosecutrix may not be deemed conclusive and the same is yet to be adjudicated/determined by the trial court during the course of trial after providing opportunity to lead the evidence to the parties.

9. It is vehemently submitted that age of the applicant is also 21 years and since they had solemnized marriage and their family members have now also accepted their relationship, further detention of the applicant in prison may ruin matrimonial aspect of the prosecutrix also.

10. It is next submitted that applicant is in jail in this case since 31.08.2023 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.

11. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the prosecutrix was minor at the date and time of the alleged incident and till today, she had not attained the age of majority, therefore, her consent is immaterial 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.

12. Shri Mukesh Kumar, learned counsel for the complainant/opposite party no.2 while referring to the counter affidavit filed today submits that relationship of the applicant and the prosecutrix has now been accepted by their family members and since the applicant and prosecutrix have also solemnized marriage, the complainant/informant is not having any objection, if the facility of bail is extended to the applicant.

13. It is also submitted that since the family members of both the parties are ready to solemnize their marriage in accordance with the Hindu Rites, further detention of the applicant in prison may also affect the matrimonial obligation of the prosecutrix and he (learned counsel for the complainant/opposite party no.2) is making a statement under instructions given to him by the complainant/opposite party no.2 that the complainant is not having any objection, if the facility of bail is extended to the applicant.

14. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. has not alleged any kind of allegation against the applicant and she stated to have accompanied the applicant with her free wish and volition and have also entered sexual relationship with her free consent. Thus except minority of the prosecutrix, there is nothing against the applicant. With regard to the age of the prosecutrix, in the F.I.R. her age has been shown as 16 years and she has stated in her statement recorded under Section 161 and 164 Cr.P.C. her age to be of 17 years while as per her educational credentials her age is coming at the date and time of the alleged incident one month and 10 days short of 16 years. Age of the applicant appears to be 21 years. They also stated to have solemnized marriage and since their families have also acknowledged/accepted their relationship, it is submitted with considerable force that further detention of the applicant in prison may ruin matrimonial aspects of the prosecutrix also. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 31.08.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

15. 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**.

16. Let the accused/applicant- **Rohit Alias Mathayi** 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.

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

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

19. 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 :- 28.11.2023

Anupam S/-