

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13788 of 2023

Applicant :- Waseem

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

Counsel for Applicant :- Ajeet Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned AGA informs that opposite party no.2 has been sufficiently served and a communication received by him from the Police Station Shahabad, Hardoi with regard to the service on opposite party no.2 is placed for perusal of the record and the same is taken on record, thus the opposite party no.2/complainant appears to have been served sufficiently/personally and is not represented.

2. Heard Shri Ajeet 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- **Waseem** for grant of bail, in Case Crime No. 384/2023, under Sections 363, 366, 376 IPC and 3/4 of POCSO Act, Police Station Shahabad, District Hardoi, 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 has been lodged by the mother of the victim on 28.7.2023 alleging therein that the applicant had enticed away her daughter aged about 16 years on 27.7.2023 at 7.30 P.M. The prosecutrix was recovered on 16.8.2023 and her statements under Sections 161 and 164 Cr.P.C. was recorded wherein she did not impute any allegations against the applicant and has stated that she had gone with the applicant with her free consent and volition and they have solemnized marriage and sexual intercourse has also been established between them with her consent.

5. It is vehemently submitted that though in the FIR, the age of the prosecutrix has been mentioned as 16 years but through

radio-logical process her age has been assessed as 18 years and as per her educational credentials her date of birth is 1.1.2006 by which she comes of about 17 years and six months at the date and time of the incident and thus, through educational credentials she was not a major but was having sufficient intellect to understand her welfare as well as the nature of the act and since she had not imputed any allegations against the applicant, thus no offence had been committed by the applicant.

6. It is further submitted that at the time of marriage with the victim/ prosecutrix, the prosecutrix was almost major at the date and time of the incident and they want live a happy married life. The applicant is in jail in this case since 26.8.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted and 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.

7. Learned A.G.A. on the other hand opposes the prayer of bail of the applicant on the ground that the consent of the prosecutrix is immaterial as she was not major at the date and time of the incident, therefore he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix as per radio-logical process has been assessed as 18 years and as per education credentials she was about 17 years and 6 months at the date and time of the alleged incident and it is in this background, it is vehemently submitted that the prosecutrix was almost major and was having sufficient intellect to understand her welfare and nature of the act. Admittedly, the prosecutrix did not impute any allegations. It is also stated by her that she has solemnized marriage with the applicant.

9. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

10. Let the applicant- **Waseem** 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.

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

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

13. 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 :- 22.11.2023 / Muk