

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13931 of 2023

Applicant :- Gulab Chand

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

Counsel for Applicant :- Surya Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that in pursuance of the order of this Court dated 24.11.2023, opposite party no.2/complainant has been sufficiently served and in this regard a communication sent by the Police Station Tarun, District Ayodhya is placed before this Court for perusal, which shows that opposite party no.2/complainant has been sufficiently served and the same is taken on record. Thus opposite party no.2/complainant has been sufficiently served, however, none is present on his behalf.

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 learned counsel for the accused-applicant 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- **Gulab Chand** for grant of bail, in Case Crime No.128 of 2023, under Sections 363, 366, 376 I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Tarun, District Ayodhya (Faizabad), 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 father of the prosecutrix on 06.06.2023 alleging therein that the applicant has enticed away his daughter aged about 17 and half years four days before from lodging of the F.I.R. On being recovered, statements of the prosecutrix were recorded under Sections 161 and 164 Cr.P.C., wherein she stated to have solemnized marriage with the applicant and had accompanied

him on her own will and consent and also that sexual relations have been made by her with the applicant with her free wish and consent.

7. Highlighting the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., it is vehemently submitted on behalf of the applicant that the prosecutrix has not levelled any kind of allegation against the applicant and it is admitted to her that it was she, who had persuaded the applicant to take her with him and it is on her free wish and volition, they had gone to Punjab (Jalandhar), solemnized marriage and also cohabited with her free wish and consent, thus no offence in fact has been committed by the applicant more so when admittedly age of the prosecutrix is 17 years, 7 months and 21 days at the date and time of alleged incident and though she was not major, but was having sufficient intellect to understand her welfare as well as nature of the act. There is no abnormality found in the medical report of the prosecutrix.

8. It is next submitted that applicant is in jail in this case since 09.07.2023 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 age of the prosecutrix as per her educational credentials is 17 years, 7 months and 21 days at the date and time of the alleged incident, thus she was not major at the date and time of alleged incident, but a girl of such age must be having sufficient intellect and understanding to infer her welfare as well as nature of the act. She had categorically stated to have solemnized marriage with the applicant and also that it was she, who had persuaded the applicant to take her with him and also that sexual relations between them have been established with her free wish and consent and it is in this background submitted by learned counsel for the applicant that no offence is emerging against the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 09.07.2023 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, keeping in view the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. 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- **Gulab Chand** 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 :- 2.12.2023

Anupam S/-