

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13950 of 2023

Applicant :- Suraj

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by the State is taken on record.
2. The State in its counter affidavit has also enclosed the communication sent by the concerned Police Station with regard to the service on opposite party No.2. Thus, the opposite party No.2 has been sufficiently served, however, he is not represented.
3. Heard Shri Ramakar Shukla, 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- **Suraj** for grant of bail, in Case Crime No. 340/2023, under Section 376 I.P.C. and Section 3/4 Protection of Children from Sexual Offences Act, 2012, Police Station- Gusaiganj, District- Sultanpur, 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 the F.I.R. of this case has been lodged by the father of the victim on 09.08.2023 alleging therein that his daughter aged about 16 years is being subjected to sexual assault by the applicant on the pretext of extending false promise of marriage. During the course of investigation, the statement of the prosecutrix/ victim was recorded under Section 161 Cr.P.C., wherein she stated to be in love with the applicant and also that sexual relation between them were established. However, in her statement recorded under Section 164 Cr.P.C., she denied to have made any sexual intercourse with the applicant.

7. It is vehemently submitted that the date of birth of the prosecutrix is 12.06.2005 as per her educational credentials by which she is coming of the age of 17 years, 1 month and 23 days at the date and time of the incident. Her radiological age has been assessed as 18 years, thus, for all the purposes, the prosecutrix appears to be major at the date and time of the incident and since she has not stated anything against the applicant in her statement under Section 164 Cr.P.C., therefore, no offence has been committed by the applicant. The applicant is in jail in this case since 11.08.2023 and he is not having any criminal history 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.

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 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.

9. Perusal of the record would reveal that the radiological age of the prosecutrix has been assessed as 18 years. As per her educational credential her age is coming of 17 years, 1 month and 23 days at the date and time of the incident. In her statement recorded under Section 164 Cr.P.C., she has not stated anything against the applicant. The applicant is in jail in this case since 11.08.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Suraj** 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.

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

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

14. 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 :- 21.12.2023

Gurpreet Singh