

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13949 of 2023

Applicant :- Mubarak

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

Counsel for Applicant :- Alok Kumar Mishra, Anil Rawat

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed on behalf of the State is taken on record. The State along with its counter affidavit has enclosed a copy of the information allegedly given to the complainant/informant/opposite party no.2 as C.A.-1. However, despite being served sufficiently, the opposite party no.2 (complainant) is not represented.

2. Heard Shri Alok Kumar Mishra, 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- **Mubarak** for grant of bail, in Case Crime No. 642 of 2023, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012, Police Station Kotwali City, 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 age of the prosecutrix as per ossification test has been assessed as 18-19 years and as per her educational credentials her age is coming about 17 years, 11 months and 07 days at the date and time of the incident and she in her statements recorded under Section 161 and 164 Cr.P.C. has not imputed any allegation against the applicant and her statements are only to the tune that she was in love with the applicant, they had gone to Delhi and sexual relations were also established between them with her consent.

5. It is vehemently submitted that since the prosecutrix was almost major/major at the date and time of the incident, no offence in fact may be attributed to the applicant. Applicant is languishing in jail in this case since 12.09.2023 and he is not

having any criminal history 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. It is also submitted that no abnormality or any injury, etc. has been found in the medical examination report of the prosecutrix/victim.

6. Learned A.G.A. on the other hand submits that the prosecutrix at the date and time of the incident was not of the age where consent may be given and, therefore, he is not entitled to be released on bail.

7. Perusal of the record would reveal that as per ossification test the age of the prosecutrix has been assessed as 18-19 years and as per her educational credentials her age is coming about 17 years, 11 months and 07 days at the date and time of the incident. Admittedly she has not imputed any allegation against the applicant in her statements recorded under Section 161 and 164 Cr.P.C. No abnormality or any injury has been found in the medication examination report of the prosecutrix. Applicant is languishing in jail in this case since 12.09.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

8. 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**.

9. Let the accused/applicant- **Mubarak** 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.

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

11. Identity, status and residence proof of the applicant and

sureties be verified by the Court concerned before the bonds are accepted.

12. 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 :- 19.12.2023

Praveen