

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14135 of 2023

Applicant :- Mo. Danish

Opposite Party :- State Of U.P.Trhu. Prin. Secy. Home And 3 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/ complainant/ informant has been sufficiently served and in this regard a communication sent by S.H.O., Police Station Kachhauna, District Hardoi is placed before this Court and is taken on record. Thus, the opposite party no.2/ informant appears to have been sufficiently served, however, he is not represented.

2. Learned AGA informs that she has procured complete instructions in the matter including upto date case diary and charge sheet in this case has already been submitted.

3. 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.

4. This bail application has been moved by the accused/applicant- **Mo. Danish** for grant of bail, in Case Crime No. 253/2023, under Sections 363, 366, 376 IPC and 3/4 POCSO Act, Police Station Kachhauna, District Hardoi, during trial.

5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report of this case has been lodged on 15.7.2023 by the father of the victim / prosecutrix alleging therein that on 14.7.2023 with the allegation that in the intervening night of 14/15.7.2023 his daughter aged about 17 years (date of birth 1.1.2006) has been enticed away by the applicant and she has also taken with her Rs. 40,000/- cash and some jewelry. The prosecutrix has been recovered on 28.7.2023 and her statement was recorded under Sections 161 and 164 Cr.P.C., wherein she has not levelled any kind of allegation and stated that she was in love with the applicant and they were intending to solemnize marriage and after leaving her

home she was living at Delhi with the applicant as husband and wife and physical relations was also established with her free wish and will and consent and she was in love with the applicant and it is also stated that she left her home willingly.

6. Highlighting the above fact, it is vehemently submitted that the prosecutrix has not levelled any kind of allegation against the applicant and charge sheet in this case has been submitted.

7. It is vehemently submitted that the date of birth of the prosecutrix as shown in the FIR is 1.1.2006 which is not disputed, by which date the prosecutrix is coming about 17 years and 7 months at the date and time of the incident. Though she was not major at the date and time of the incident but was having sufficient intellect and understanding with regard to her welfare and nature of the act.

8. It is also submitted that the age of the prosecutrix as shown in her educational credentials may not be deemed to be conclusive in absence of any basis on which the date of birth of the prosecutrix has been recorded in the school record, in the background of her age assessed through radio logical process as 18-19 years and therefore the same is open for determination by the trial court after providing an opportunity to lead evidence to the parties.

9. It is further submitted that the applicant is in jail in this case since 28.07.2023 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.

10. Learned A.G.A., however, opposes the prayer for bail of the applicant on the ground that the consent of the prosecutrix would be immaterial having regard to her minority and thus the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix as per the educational credentials is 17 years and 7 month at the date and time of the incident and it is in this background, it is submitted that the prosecutrix was not major but was of an age where a person may have sufficient intellect to understand her welfare as well as the nature of the act. It appears that the prosecutrix has not levelled any kind of allegation against the applicant. The trial is yet to start before the trial court, however, the charge sheet has been submitted. The applicant is in jail in this case since 28.07.2023 and he is not having any

criminal antecedent. His presence may be secured by placing adequate conditions.

12. 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**.

13. Let the applicant- **Mo. Danish** 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.

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

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

16. 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 :- 6.12.2023

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