

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14124 of 2023

Applicant :- Daddu

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

Counsel for Applicant :- Sachin Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Shri Ravi Prakash Singh, Advocate has filed his 'vakalatnama' on behalf of the complainant/informant, the same is taken on record.
2. It is informed by learned A.G.A. that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.
3. Heard learned counsel for the accused-applicant, Shri Ravi Prakash Singh, learned counsel appearing for the complainant/informant 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- **Daddu** for grant of bail, in Case Crime No. 108 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 Gilaula, District Shrawasti, 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 by the father of the prosecutrix on 05.06.2023 at Police Station Gilaula, District Shrawasti alleging that his daughter aged about 17 years had gone on 04.06.2023 at 11:00 am. to Ratnapur but did not return till the evening and it is apprehended that she has been enticed away by someone. Thus, the applicant was not named in the F.I.R.
6. It is further submitted that the prosecutrix was recovered on 11.06.2023 and her statement under Section 161 and 164 Cr.P.C. was recorded, wherein she stated that she had accompanied the applicant with her own wish, consent and volition, as the applicant is known to her for the last two years

and they were in love with each other and they had gone to Bahraich and thereafter to Gonda and ultimately to Punjab where they had solemnized marriage and as the father of the applicant was detained by the police therein whatever had happened between them as and when with her consent.

7. It is vehemently submitted that the prosecutrix has not levelled any kind of allegation against the applicant in her statement recorded under Section 161 and 164 Cr.P.C. and so much so she has also been testified before the trial Court as P.W.-1, wherein also she has not levelled any allegation against the applicant and has categorically stated that her statement under Section 161 Cr.P.C. has been wrongly recorded by the police and her statement under Section 164 Cr.P.C. was given under the influence of the police.

8. It is further submitted that the age of the prosecutrix as per her educational credentials is coming as 16 years and 10 months at the date and time of the incident, while as per radio-logical process her age has been determined as 16 years and though, she was not major at the date and time of the incident. However, in absence of any allegation against the applicant and the fact that the prosecutrix has turned hostile, the conviction of the applicant would be a remote possibility.

9. It is also highlighted that the prosecutrix was also medically examined on 12.06.2023 and no abnormality or no sign of force or sexual assault has been found. Thus, there is no medical evidence in support of the allegations raised by the prosecution. Applicant is languishing in jail in this case since 18.06.2023 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.

10. 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, therefore, he is not entitled to be released on bail.

11. Shri Ravi Prakash Singh, learned counsel appearing for the complainant/informant, under the instructions from the complainant is making a statement that the complainant/informant are not having any objection if the facility of bail is extended to the applicant.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that age of the prosecutrix as per her educational credentials is 16 years and 10 months at the date and time of the incident, while as per ossification test her

age has been assessed as 16 years. Thus, the prosecutrix was minor at the date and time of the incident. In her statement recorded under Section 161 and 164 Cr.P.C. as well as before the trial Court as P.W.-1, she has not levelled any kind of allegations against the applicant and it is vehemently submitted in this background that when the prosecutrix has not supported the allegation of sexual assault before the trial Court, the conviction of the applicant would be a remote possibility in absence of any medical evidence. Applicant is languishing in jail in this case since 18.06.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the accused/applicant- **Daddu** 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.

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

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

17. 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 :- 6.12.2023

Praveen