

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14140 of 2023

Applicant :- Meraj Ahmad

Opposite Party :- State Of Thru. Prin. Secy Home Lko. And 3 Others

Counsel for Applicant :- Farooq Ayoob

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1.Counter affidavit filed by the opposite party no.2/ complainant is taken on record.

2. Learned AGA informs that he has procured complete instructions in the matter along with upto date case diary.

3. Heard Shri Farooq Ayoob, learned counsel for the accused/applicant, Shri Mohd. Ashraf, learned counsel for opposite party no.2 / complainant 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- **Meraj Ahmad** for grant of bail, in Case Crime No. 0072/2023, under sections 363, 366, 376 IPC and 3/4 POCSO Act, Police Station Safdarganj, District Barabanki, during trial.

5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. Though the applicant was named in the FIR and in the statement of the prosecutrix recorded under Sections 161 Cr.P.C. the allegation of sexual assault has been levelled against the applicant but in the statement recorded before the Magistrate under Section 164 Cr.P.C. she has not levelled any kind of allegation against the applicant and has stated that she had herself gone with the co-accused Shahabuddin and she had only asked the applicant to render some help otherwise the applicant was not in knowledge of any thing.

6. It is also submitted that the prosecutrix has solemnized marriage with co-accused Shahabuddin on 2.10.2023 and they are living a happy marital life.

7. It is also submitted that co-accused Shahab @ Shahabuddin

has been granted bail by a Coordinate Bench of this court, vide order dated 19.7.2023 passed in Crl. Misc. Bail Application No. 7395 of 2023. As per school record the prosecutrix comes about 17 years and 9 months at the date and time of the incident while as per ossification test her age has been assessed as 18 years.

8. It is further submitted that the applicant is in jail in this case since 30.03.2023 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.

9. Learned A.G.A., however, opposes the prayer for bail of the applicant on the ground that the prosecutrix was not of consenting age.

10. Shri Mohd. Ashraf appearing on behalf of the complainant/informant/opposite party no.2 while drawing the attention of this Court towards the counter affidavit filed by him, submits that the applicant was wrongly implicated in this case while the prosecutrix was in love with the co-accused Shahabuddin and has accompanied him with her own will and volition and in her statement recorded before the Magistrate under Section 164 Cr.P.C. she has spoken truth by stating that the applicant was not having any concern with her or co-accused Shahabuddin. It is also submitted by the parties that co-accused Shahabuddin has solemnized marriage with the prosecutrix and he has also been released on bail by a Coordinate Bench of this Court.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix in her statement recorded before the Magistrate under Section 164 Cr.P.C. has stated the truth by stating that the applicant was not having any concern with her and she had herself gone with the co-accused Shahabuddin and she had only asked the applicant to render some help otherwise the applicant was not in knowledge of any thing. It is also submitted by the parties that co-accused Shahabuddin has solemnized marriage with the prosecutrix and he has also been released on bail by a Coordinate Bench of this Court. The applicant is in jail in this case since 30.03.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. His presence may be secured before the trial court 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- **Meraj Ahmad** 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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