

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14304 of 2023

Applicant :- Vishram Verma

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

Counsel for Applicant :- Anil Kumar Mishra, Kaushal Tiwari, Manoj Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Learned AGA informs that opposite party no.2/ complainant of this case is sufficiently served at their end and in this regard an information given to the opposite party no.2/ informant in writing by the concerned Police Station has been placed for perusal of this Court and the same is taken on record.
3. Perusal of this information would sufficiently project that opposite party no.2/ informant of this case has been personally served, however, he is not represented.
4. Heard learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- **Vishram Verma** for grant of bail, in Case Crime No. 0154/2023, under Sections 363, 366, 376 IPC & Section 3/4 POCSO Act, Police Station Sirsiya, District Shrawasti, during trial.
6. 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 20.06.2023 alleging therein that on 20.06.2023 her daughter aged about 16 years got missing and on making an inquiry it was known that she has been enticed away by the applicant with the help of his family members (other accused persons named in the FIR). The prosecutrix was recovered on the next day i.e. 21.6.2023 and her statement under Section 161 Cr.P.C. was recorded, wherein she admitted to be on talking terms to the applicant and that she

had accompanied the applicant on her own volition and consent and resided with him at 2 different locations and thereafter she was apprehended by the police. In her statement recorded under Section 164 Cr.P.C. the prosecutrix has improved the story to the tune that the applicant was known to her and when on the fateful day she was sleeping on her house, she found the applicant closing her mouth and he had taken her out of her house and thereafter to a lonely house where they resided for the whole night, however, the applicant did not commit rape or established sexual relations with her.

7. Highlighting the above facts, it is vehemently submitted that neither in the statement of the prosecutrix recorded under Section 161 Cr.P.C. nor in her statement recorded under Section 164 Cr. P.C. she stated about commission of sexual assault or rape and it is in the realm of hypothesis as to on what ground the Investigating Officer has inferred establishing of sexual relations while the victim in her statement recorded under Section 164 Cr.P.C. has specifically stated that the applicant did not establish sexual relations with her.

8. It is further submitted that though at the date and time of the alleged incident the prosecutrix was not major but as per her age determined through ossification test she was 19 years and as per her educational credentials she was 17 years and 2 months and thus, she was having sufficient intellect to understand her welfare as well as the nature of act. and since there are material contradictions in the manner of accompanying her with the applicant the whole case of the prosecution appears to be under the cloud of suspicion.

9. It is also submitted that the applicant is in jail in this case since 14.07.2023 and he is not having any criminal antecedent and there is not 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 consent of the prosecutrix was immaterial as she was minor. Moreover she was also found pregnant and the samples have been sent for DNA examination.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix as per ossification test has been assessed as 19 years while as per her educational credentials she comes to be as 17 years and 2 months at the date and time of the alleged incident. She has not levelled allegations in her statement recorded under

Sections 161 and 164 Cr.P.C. pertaining to the commission of sexual assault, rape or sexual intercourse and has categorically denied in her statement recorded under Section 164 Cr.P.C. that the applicant had not established any sexual relations with her and in this background it is submitted on behalf of the applicant that there was no material available before the Investigating Officer to have submitted the charge sheet under Section 376 IPC in the background of denial of the prosecutrix pertaining to making sexual relations by the applicant. The applicant is in jail in this case since 14.07.2023 and he is not having any criminal antecedent. 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- **Vishram Verma** 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 :- 8.12.2023

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