

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14477 of 2023

Applicant :- Janki Paswan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko.

Counsel for Applicant :- Gyanendra Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. It is informed by learned A.G.A. that she has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.

2. Heard 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- **Janki Paswan** for grant of bail, in Case Crime No. 433 of 2023, under Section 366 and 376 I.P.C., Police Station Risia, District Bahraich, during trial.

4. 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 mother of the victim on 02.10.2023 alleging that in the intervening night of 29/30.09.2023 the prosecutrix, who is aged about 25 years, was alone in the house at about 1:30 am. had gone out of the house to ease herself, however, from there she was enticed away by the applicant. The prosecutrix was recovered on 16.10.2023 and her statement under Section 161 and 164 Cr.P.C. was recorded, wherein she admitted that her age is about 25 years, she had not got education anywhere, the applicant is her neighbour and they were talking for the last two years, however, in between the applicant had solemnized his marriage and she stopped talking to him and thereafter the applicant had gone to Mumbai from where he threatened that if she will not talk to him, he would place hurdles in her marriage. About 18 days ago at 1:30 am. he called me and asked me to come out of my house and thereafter persuaded/enticed her to leave her house and she accompanied him to Gujrat where she was sexually assaulted in an accommodation taken by the applicant on rent.

5. Highlighting the above facts, it is vehemently submitted that

the story, as cooked up by the prosecutrix is highly improbable and could not be believed and there is material contradictions in her statements recorded under Section 161 and 164 Cr.P.C. In this regard, attention of this Court has been drawn towards the statement of the prosecutrix recorded under Section 164 Cr.P.C., wherein she in categorical terms admitted that she was called by the applicant and she came out of her house and accompanied him and she was taken to Gujrat where she was sexually assaulted.

6. It is vehemently submitted that conduct of the prosecutrix/victim in accompanying the applicant and of going with him to Gujrat and thereafter submitting herself for sexual relations is a clear indication that she was a 'consenting party' and since she was aged about 25 years and major, no offence in fact has been committed by the applicant. No abnormality or any injury, etc. has also been found in the medical examination report of the prosecutrix. Applicant is languishing in jail in this case since 18.10.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

7. 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.

8. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix through ossification test has been assessed as 18 to 19 years. Thus, she appears to be major at the date and time of the incident, as there is no other evidence/material collected by the investigating officer with regard to the age of the prosecutrix. She has alleged that she had accompanied the applicant and had gone to Gujrat with him and was kept in a room and was sexually assaulted. The defence of the applicant appears to be that the conduct of the prosecutrix in accompanying the applicant and had gone to Gujrat and also submitting herself to sexual intercourse would itself amount to consent and there is no element of rape and sexual assault in this case. Applicant is languishing in jail in this case since 18.10.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the accused/applicant- **Janki Paswan** 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.

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

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

13. 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 :- 8.12.2023

Praveen