

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15410 of 2023

Applicant :- Raj Kumar

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

Counsel for Applicant :- Krishna Kumar Singh, Anshu Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. It is informed by learned AGA that the opposite party no.2/complainant of this case has been sufficiently served and in this regard, a communication has been sent by the S.H.O. of P.S.- Hasanganj, District- Unnao. The said communication is placed before this Court for perusal and is taken on record. Thus, it is evident that the opposite party no.2/complainant has been sufficiently served. However, she is not represented.
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- **Raj Kumar** for grant of bail, in Case Crime No. 290 of 2023, under Sections 363,366,376 IPC & 3/4 of POCSO Act, Police Station Hasanganj, District Unnao, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
5. It is further submitted that the FIR of this case has been lodged by the mother of the prosecutrix/victim on 10.9.2023 alleging therein that her daughter aged about 17 years had been enticed away by the applicant on 5.9.2023. On the recovery of the prosecutrix/victim, her statements under Section 161 & 164 CrPC were recorded wherein she stated her age to be of 17 years and also that she got education up to XIIth standard and also that she was in love with the applicant as they were working together and the sexual relations between them were established with her consent. They have also solemnized marriage in a temple at Delhi and were living as husband and wife.

6. Highlighting the above facts, it is vehemently submitted that the prosecutrix/victim after recovery refused to undergo any medical examination and she in her statements recorded under Sections 161 & 164 CrPC has not alleged any imputation against the applicant, rather in her statement recorded under Section 164 CrPC, she has stated that after being scolded and assaulted by her sister and mother, she had left her home herself on her own volition and had made a phone call to the applicant and asked him to take her and when he refused, she intimidated that she would hang herself and then, she had gone to the village of the applicant from where they had gone to Delhi. Thus, in the statement of the prosecutrix/victim recorded under Section 164 CrPC, there is no averment of making sexual relations at all.

7. It is further submitted that in case of contradictions in the statement of the prosecutrix/victim recorded by the investigating officer under Section 161 CrPC vis-a-vis the statement of the prosecutrix/victim recorded by the Magistrate under Section 164 CrPC, the weightage and precedence has to be given to the statement of the prosecutrix/victim recorded by the Magistrate and since in her statement recorded under Section 164 CrPC, she has not imputed any allegation against the applicant, no offence in fact has been committed by the applicant.

8. It is further submitted that the applicant is in jail in this case since 23.9.2023 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed 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., on the other hand, opposes the prayer for bail of the applicant and submits that the prosecutrix/victim was not of the age where she can give her consent.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the date of birth of the prosecutrix/victim as recorded in her Class Xth marks-sheet is 25.12.2006 whereby she is coming aged about 16 years and 9 months at the date and time of the incident. She in her statement recorded under Section 161 CrPC is stated to have left her home herself. In her statement recorded under Section 164 CrPC, she stated that when she was scolded and assaulted by her mother and sister, she had made a phone call to the applicant and pressurized him to take her with him and when he did not come, she herself had gone to his village from where they had gone to Delhi and solemnized marriage and no

reference for making sexual relations has been made in her statement recorded before the Magistrate under Section 164 CrPC. Significantly, the prosecutrix/victim also refused to undergo any medical examination and it is in this background, it is submitted that the prosecutrix/victim was a consenting party. The applicant is in jail in this case since 23.9.2023 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

11. 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**.

12. Let the applicant- **Raj Kumar** 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.

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

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

15. 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 :- 22.12.2023

Shravan