

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24339 of 2024

Applicant :- Ravikant Patel

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Abhishek Singh, Dhirendra Kumar
Srivastava, Kamla Singh

Counsel for Opposite Party :- Buddha Prakash, G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Ms. Kamla Singh, learned counsel for the applicant and Sri Bade Lal Bind, learned counsel for the State and perused the record.
3. Sri Buddha Prakash, learned counsel for the first informant / opposite party no. 2 is not present.
4. The records show that even previously on 01.04.2025 and 29.04.2025, learned counsel for the first informant was not present even in the revised list. The Court proceeds to hear the matter.
5. The present bail application under Section 439 Cr.P.C. has been filed by the applicant **Ravikant Patel** with a prayer to release him on bail in Case Crime No.172 of 2021, under Sections 363, 366, 376, 504 I.P.C. read with Section 3/4 POCSO Act, Police Station Saiyadraja, District Chandauli, during the pendency of trial.
6. This is the third bail application. The first bail application of the applicant was rejected by this Court vide order dated 24.05.2022 passed in Criminal Misc. Bail Application No.4923 of 2022 (Ravikant Patel vs. State of U.P.).

7. The second bail application of the applicant was also rejected by this Court vide order dated 12.12.2023 passed in Criminal Misc. Bail Application No. 12822 of 2023 (Ravikant Patel vs. State of U.P.).

8. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. It is submitted that the victim has now attained majority and after being major, she is living with the parents of the applicant. While placing the order dated 30.04.2024 passed by the Child Welfare Committee, Chandauli (Uttar Pradesh) which is annexed as Annexure-15 to the affidavit, it is submitted that father of the victim tried to take her custody after she attained majority but she refused to go with him and thus she was left to go and live as per her own will. It is further submitted that the trial in the matter is proceeding at a very slow pace and till date only two witnesses have been examined. Learned counsel for the applicant has relied upon the judgement of the Apex Court in the case of **K. Dhandapani vs. The State By The Inspector of Police in Criminal Appeal No. 796 of 2022** decided on 09.05.2022 and has submitted that in a case of identical nature, the Apex Court set aside the conviction and sentence of the appellant in an appeal. It is further submitted that looking to the judgement of the Apex Court and facts of the present case and also fact that the trial in the matter is proceeding at a very slow pace. The applicant is in jail since 17.11.2021. The applicant be directed to be released on bail.

9. *Per contra*, learned counsel for the State vehemently opposed the prayer for bail and submitted that first and second bail application of the applicant have been rejected by this court vide orders dated 24.05.2022 and 12.12.2023. It is submitted that the

trial in the matter is going on, in which two witnesses have been examined. It is further submitted that the fact that two witnesses have been examined, has already been considered by this Court while deciding the second bail application of the applicant. It is further submitted that the age of the victim at the time of incident is relevant age which has to be looked by this Court. It is further submitted that there is no fresh and new ground in the present bail application. The bail application be dismissed.

10. After having heard the learned counsels for the parties, perusing the records, it is evident that this is the third bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 24.05.2022. The same reads as under :-

" Heard Sri Sudarshan Singh, learned counsel for the applicant, Sri Buddha Prakash, learned counsel for the first informant, Sri Bare Lal Bind, learned Brief Holder for the State and perused the material on record. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Ravikant Patel, seeking enlargement on bail during trial in connection with Case Crime No. 172 of 2021, under Sections 363, 366, 376, 504 I.P.C. and 3/4 POCSO Act, registered at P.S. Saiyad Raza, District Chandauli.

Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the prosecutrix went with the applicant out of her own sweet will and solemnized marriage with him. It is further argued that the prosecutrix in her statement recorded under Section 161 Cr.P.C. disclosed her age as 18 years and in the statement recorded under Section 164 Cr.P.C. she disclosed her age as 19 years and as such she is major. Learned counsel for the applicant argued that the prosecutrix was produced before the doctor but she refused her internal medical examination, but the doctor examined her externally and did not find any injury on her person. It is argued that in so far as the allegation of rape is concerned the prosecutrix has not stated of any sexual assault on her either in her statement under Section 161 Cr.P.C. or in the statement under Section 164 Cr.P.C. but to the contrary she states that she went with the applicant and solemnized marriage with him out of her own sweet will and both lived as husband and wife. It is argued that the applicant has criminal history of one case which has been disclosed and explained in para-3 of the supplementary affidavit dated 19.4.2022 in which he has been granted bail.

It is further argued that the present F.I.R. has been lodged on the basis of an

application dated 3.4.2021 filed under Section 156 (3) Cr.P.C. which has been moved after an inordinate delay of about six months as the incident in question is alleged to have taken place on 18.10.2020.

Per contra, learned State counsel and learned counsel for the first informant vehemently opposed the prayer for bail and argued that as per school records, the prosecutrix is aged about 14 years 11 months at the time of incident. Further it is argued that prosecutrix in her statement recorded under Section 161 Cr.P.C. has stated that she was living with the applicant as husband and wife and as such reasonable conclusion can be drawn that there was physical relationship between them. The prosecutrix was minor at the time of incident and as such her statement was of no credence.

*Learned counsel for the first informant relied upon the judgement of the Apex Court in the case of **X(Minor) vs. State of Jharkhand and another: 2022 LawSuit (SC) 227** and has argued that in the said case the Apex Court has held that if the prosecutrix is minor and even if she married the accused, the accused is not entitled to bail.*

After having heard learned counsels for the parties and perusing the record, it is evident that as per school records, the prosecutrix is aged about 14 years and 11 months at the time of incident. The prosecutrix is minor and consent of a minor is of no worth.

Looking to fact and circumstances of the case, nature of evidence and gravity of offence, I do not find it a fit case to release the applicant on bail.

Accordingly, the bail application is rejected."

11. The second bail application of the applicant was also rejected by this Court vide order 12.12.2023. The same reads as under :-

"1. List revised.

2. Heard Sri Ayush Mittal, learned counsel for the applicant, Sri Buddha Prakash, learned counsel for the first informant, Sri Devendra Nath Mishra, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Ravikant Patel, seeking enlargement on bail during trial in connection with Case Crime No.172 of 2021, under Sections 363, 366, 376, 504 IPC and 3/4 POCSO Act, registered at Police Station Saiyad Raja, District Chandauli.

4. This is a second bail application. The first bail application of the applicant was rejected vide order dated 24.5.2022 passed by this Court passed in Criminal Misc. Bail Application No.4923 of 2022.

5. Learned counsel for the applicant while placing annexure no.S.A-2 to the Supplementary Affidavit dated 20.11.2023 being the statement of the victim recorded before the trial court as P.W.2 argued that she in her cross-

examination has denied the prosecution case and does not state of any such incident. Looking to the said statement, the implication in the present case is false, as such applicant be released on bail. The applicant is in jail since 17.11.2021.

6. Per contra learned counsel for the first informant and learned counsel for the State vehemently opposed the prayer for bail and argued that this is the second bail application. The first bail application has been rejected on merits by this Court. Pakhandu, P.W.1 who is the first informant and father of the victim has supported the prosecution case. In so far as the statement of the victim is concerned, the examination-in-chief of the same supports the prosecution case. The appreciation of her statement on the basis of deposition in the statement in her cross-examination is for the trial court to consider at the appropriate stage. There is no fresh and new ground. The bail application be thus rejected.

7. After hearing the counsel for the parties and perusing the record, it is evident that the first bail application of the applicant was rejected by this Court on merits vide order dated 24.5.2022, the said order reads as follows:-

"Heard Sri Sudarshan Singh, learned counsel for the applicant, Sri Buddha Prakash, learned counsel for the first informant, Sri Bare Lal Bind, learned Brief Holder for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Ravikant Patel, seeking enlargement on bail during trial in connection with Case Crime No. 172 of 2021, under Sections 363, 366, 376, 504 I.P.C. and 3/4 POCSO Act, registered at P.S. Saiyad Raza, District Chandauli.

Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the prosecutrix went with the applicant out of her own sweet will and solemnized marriage with him. It is further argued that the prosecutrix in her statement recorded under Section 161 Cr.P.C. disclosed her age as 18 years and in the statement recorded under Section 164 Cr.P.C. she disclosed her age as 19 years and as such she is major. Learned counsel for the applicant argued that the prosecutrix was produced before the doctor but she refused her internal medical examination, but the doctor examined her externally and did not find any injury on her person. It is argued that in so far as the allegation of rape is concerned the prosecutrix has not stated of any sexual assault on her either in her statement under Section 161 Cr.P.C. or in the statement under Section 164 Cr.P.C. but to the contrary she states that she went with the applicant and solemnized marriage with him out of her own sweet will and both lived as husband and wife. It is argued that the applicant has criminal history of one case which has been disclosed and explained in para-3 of the supplementary affidavit dated 19.4.2022 in which he has been granted bail.

It is further argued that the present F.I.R. has been lodged on the basis of an application dated 3.4.2021 filed under Section 156 (3) Cr.P.C. which has been moved after an inordinate delay of about six months as the incident in question is alleged to have taken place on 18.10.2020.

Per contra, learned State counsel and learned counsel for the first informant vehemently opposed the prayer for bail and argued that as per school records, the prosecutrix is aged about 14 years 11 months at the time of incident. Further it is argued that prosecutrix in her statement recorded under Section 161 Cr.P.C. has stated that she was living with the applicant as husband and wife and as such reasonable conclusion can be drawn that there was physical relationship between them. The prosecutrix was minor at the time of incident and as such her statement was of no credence.

Learned counsel for the first informant relied upon the judgement of the Apex Court in the case of X(Minor) vs. State of Jharkhand and another: 2022 LawSuit (SC) 227 and has argued that in the said case the Apex Court has held that if the prosecutrix is minor and even if she married the accused, the accused is not entitled to bail.

After having heard learned counsels for the parties and perusing the record, it is evident that as per school records, the prosecutrix is aged about 14 years and 11 months at the time of incident. The prosecutrix is minor and consent of a minor is of no worth.

Looking to fact and circumstances of the case, nature of evidence and gravity of offence, I do not find it a fit case to release the applicant on bail.

Accordingly, the bail application is rejected."

8. The first informant was examined as P.W.1 who has supported the prosecution case. In so far as the victim is concerned while being examined as P.W.2 before the trial court, she has supported the prosecution case in the examination-in-chief but in her cross-examination states of something different. The same is to be appreciated by the trial court at the appropriate stage in the trial.

9. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected."

*12. The victim now residing with the parents of the applicant after she has attained majority cannot be looked into at this stage. The relevant date for consideration of age of the victim is the date of incident and at the time of incident, the victim was aged about 14 years and 11 months. Insofar as, the judgement of the Apex Court in the case of **K. Dhandapani (supra)** is concerned, the said judgement itself clarifies that it shall not be treated as a precedent. The same, thus, is of no help to the applicant. The first two bail applications of the applicant have been rejected on merits by this Court. There is no fresh and new ground for bail is made out to*

entertain the present bail application.

13. In view of the above, the present bail application is **rejected**.

14. However, it is provided that the applicant may file an application for expeditious disposal of the trial before the court concerned within two weeks from today, which may as per its load of work, diary and pendency of cases, pass appropriate orders on the same.

Order Date :- 13.5.2025

Manoj

(Samit Gopal,J.)