

Court No. - 47

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24276 of 2022

Applicant :- Mayur @ Mansoor Ali

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

Counsel for Applicant :- Manish Joshi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

Heard Sri Manish Joshi, learned counsel for the applicant, Shri Arvind Kumar, learned A.G.A. for the State and perused the record of the case.

By way of present application, applicant made a prayer to release him on bail in Case Crime No. 13 of 2022, under Sections 363, 366, 376 I.P.C. and Section 5/6 Protection of Children from Sexual Offences Act, Police Station-Dilari, District-Moradabad during the pendency of the trial.

Learned A.G.A. apprised the court that on 07.06.2022, the notice was already served upon respondent no. 4. Despite notice, none has appeared on behalf of the respondent no. 4. Hence, notice is deemed sufficient and the present bail application is being heard and decided.

Learned counsel for the applicant submitted that prosecutrix is a major girl and she on her own performed marriage with the applicant and the allegations made in the FIR against the applicant is totally false and baseless. He further submitted that even in the statement recorded under Sections 161 and 164 Cr.P.C. prosecutrix did not allege anything against the applicant rather in the statement under Section 164 Cr.P.C. she stated that 3 years earlier also the informant of the case i.e. her father lodged a false case against the applicant and she has already performed marriage with the applicant and in both the statements she never stated that either applicant enticed her away or committed rape with her. Learned counsel for the applicant further submitted that from the bail rejection order itself it is apparent that as per medical evidence, the age of the prosecutrix is more than 18 years although he submitted that as per the TC of Class VIII of prosecutrix, her date of birth is 10.03.2006 but, as both the parties are muslim and according to the own version of the prosecutrix she had already performed marriage with the applicant and medical report states that she is major therefore, considering the facts and circumstances of the case, the applicant be released on bail and in case he is released

on bail, he will not misuse the liberty of bail and cooperate in trial.

Per contra, learned A.G.A. submitted that from the perusal of the TC of Class VIII of the school dated 08.03.2022, the date of birth of the prosecutrix is 10.03.2006 therefore, she is minor on date of incident. However he could not dispute the fact that as per medical evidence, her age is more than 18 years and further that earlier three years ago also the informant of the case lodged an FIR against the applicant as on that time too the prosecutrix went along with the applicant and further in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. prosecutrix did not alleged that applicant committed rape with her.

I have heard both the parties and perused the record of the case. Perusal of the record shows that earlier also FIR was lodged against the applicant by father of the prosecutrix i.e. informant of the case and in that case applicant was released on bail and both the applicant and prosecutrix challenged the FIR before this Court in Criminal Misc. Writ Petition No. 1553 of 2022 as there was no proof available for determination of age therefore, no order could be passed therefore, the writ petition was dismissed by this Court. The statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. clearly suggests that there is no allegation of rape against the applicant in both the statements neither it is alleged by the prosecutrix that applicant enticed her, rather perusal of the statement of the prosecutrix recorded under Sections 164 Cr.P.C. shows that she on her own performed marriage with him and there is no allegation of rape against the applicant in the present case. In the statement of prosecutrix recorded under Sections 161 and 164 Cr.P.C. she stated she had already performed marriage with applicant and according to the medical evidence her age is more than 18 years. Therefore, without expressing any opinion on the merits of the case, I am of the view that the applicant is entitled to be released on bail. Hence, the bail application is allowed.

Let the applicant- **Mayur @ Mansoor Ali** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

- i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.
- ii) The applicant will abide the orders of court, will attend the

court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavor and try to conclude the trial expeditiously after the release of the applicant.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

It is clarified that anything said in this order is limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. It is further clarified that the trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

Order Date :- 22.6.2022
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