

**Court No. - 33**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 32423 of 2020

**Applicant :-** Abhay Sharma

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Rajneesh Sharma, Aditya Sharma, Ashish Jaiswal

**Counsel for Opposite Party :-** G.A., Sufia Saba

**Hon'ble Ashwani Kumar Mishra, J.**

Heard Sri Ashish Jaiswal, learned counsel for the accused-applicant, Sri Prashant Kumar, learned A.G.A. for the State and perused the record. Video link has been sent to the learned counsel for the complainant also but she has not joined the proceedings. Considering the fact that the accused-applicant is in jail Since 14.03.2020 and is 19 years old boy, the bail application is taken up for hearing, at this stage. It is otherwise on record that no counter affidavit has been filed on behalf of the complainant.

The present bail application has been filed by the accused-applicant in FIR/ Case Crime No. 48 of 2020, under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Khuldabad, District Prayagraj.

As per the averment made in the first information report the complainant is a resident of Prayagraj and his daughter aged about 17 years appeared in the High School Examination. The victim reportedly went missing on 06.03.2020 at 12.30 P.M. and an NCR was lodged in that regard. Later on, as per the complainant she came to know that his daughter was enticed by the accused-applicant and the first information report has been lodged on 14.03.2020.

Learned counsel for the accused-applicant submits that statement of the victim under Section 161 Cr.P.C. was recorded on 14.03.2020 itself, as per which she was in love with the accused-applicant as both of them were studying in the same coaching and, therefore she had left her house on 06.03.2020, whereafter she met the accused-applicant and that both of them are in love and wants to marry. She further stated that they were arrested outside the bus stand by the police and that her dignity was not breached by the accused-applicant.

Learned counsel for the accused-applicant has further invited

the attention of this Court to the fact that the complainant denied her consent for medical examination of the victim and that later on the victim was forced to change her stand under Section 164 Cr.P.C. under pressure. It is also urged that as the accused-applicant and the victim belong to different faiths, therefore, at the intervention of members of community the victim has been forced to change her statement under Section 164 Cr.P.C. The accused-applicant allegedly has good academic background as he passed High School with 88 % marks and is pursuing graduation. The applicant has no criminal history and will not abuse the liberty if he is enlarged on bail.

Learned A.G.A. on the other hand states that the F.I.R. version is supported by the statement of the victim under Section 164 Cr.P.C. and, therefore, no case is made out for grant of bail.

I have perused the respective submission advanced on behalf of the parties and the materials placed on record. The statement of the victim recorded under Section 161 Cr.P.C. is in contradiction to the F.I.R. version and there is no allegation of outraging the modesty of the victim etc. and the complainant has also denied her permission for conduct of medical examination of the victim. The applicant is in jail for the last more than one year and the trial is not likely to be concluded shortly in these COVID times. Considering all such circumstances this Court is of the view that the accused-applicant is entitled to grant of bail. The above observation shall not be construed as any expression of opinion, on merits, at the stage of trial.

Let the applicant- Abhay Sharma involved in aforesaid case crime be released on bail on his 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 shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) 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. is issued and the 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 of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

(v) The party may file self attested computer generated copy of such order downloaded from the official website of High Court Allahabad. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

**Order Date :- 30.4.2021**

Abhishek Singh