

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12685 of 2022

Applicant :- Prabhat Kumar

Opposite Party :- State Of U.P. Thru. Secy. Deptt. Of Home Lko. And 4 Others

Counsel for Applicant :- Akhand Pratap Singh, Mukesh Dhar Dwivedi, Vinay Misra

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. and perused the record. None turned up on behalf of the informant despite service of notice.

2. In terms of the FIR, it was alleged that the daughter of the informant was enticed by the applicant around two months ago and a rape was committed in a hotel, subsequently a video was also made and on the threat of making the said video viral, he was threatening the victim. The FIR was lodged on 11.07.2022 and the incident was allegedly occurred two months ago. In the statement under Section 161 Cr.P.C., which is on record, it was stated that the victim knew the applicant and around two months ago, she was enticed and taken to a hotel where wrong was done to her and the video was also made. In the statement under Section 164 Cr.P.C., which is on record, it was stated that the victim had met the applicant at a marriage and thereafter they used to talk on telephone and the applicant called her to Gosaiganj, where she went and thereafter they went to a hotel where a wrong was committed on her and a video was also made. She also stated that she did not raise any hue any cry at the hotel. During the course of trial, an information was given by the informant, which is on record as

Annexure No. 1 to the rejoinder affidavit filed on 23.12.2022, wherein the informant had stated that she had mentioned the name of the hotel only to bring gravity to the offence. As per the High School Certificate-cum-Marks sheet, the date of birth of the victim is 28.03.2006, however the counsel for the applicant relies upon the R.T.I. query made to the Office of Bal Vikas Pariyojan Adhikari, Mohanlalganj, Lucknow, who has stated on the basis of survey register, the date of birth of the victim is 01.01.2003. The applicant has no criminal history and is in custody since 11.07.2022.

3. Learned A.G.A. opposed the bail prayer.

4. Considering the fact that there is a dispute with regard to the age of the victim, which shall be adjudicated at the time of trial in view of the law laid down in the case of ***Monish Vs. State of U.P. passed in Criminal Misc. Bail Application No. 55026 of 2021 decided on 09.02.2023*** coupled with the fact that F.I.R. in question was lodged after about two months of the alleged incident without there being any plausible explanation for delay in lodging the FIR and the statement of the victim recorded under Section 164 Cr.P.C., which primarily discloses that the victim had gone with the applicant out of her own free will coupled with the fact that the applicant has no criminal history and is in custody since 11.07.2022 and there is nothing on record to demonstrate that the applicant if enlarged on bail, would in any way adversely affect the trial and without expressing any opinion on merit, I am of the view that the applicant is entitled to be released on bail. Accordingly, the bail application is ***allowed***.

5. Let the applicant ***Prabhat Kumar*** be released on bail in FIR/ Case Crime No. 337 of 2022, under Sections 363, 366, 376, 506 IPC and Section 3/4 POCSO Act, Police Station Mohanlalganj, District

Lucknow, on his furnishing personal bonds and two reliable sureties of Rs.25,000/- each to the satisfaction of the court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date :- 31.1.2024

Arun