

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30022 of 2020

Applicant :- Shaban

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Raghvendra Prakash

Counsel for Opposite Party :- G.A.,Birendra Kumar Arya

Hon'ble Ram Krishna Gautam,J.

By means of this application the applicant, Shaban, has prayed to release him on bail in Case Crime No. 194 of 2019, under Sections-363, 366, 376 I.P.C., Section 5 Ja (2)/6 of POCSO Act, and 3 (2)5 of SC/ST Act, Police Station-Gambhirpur, District-Azamgarh.

Heard learned counsel for the applicant and learned AGA representing the State. Perused the record.

Learned counsel for the applicant argued that the applicant is innocent. He has been falsely implicated in this very case crime number and is languishing in jail since 13.03.2020. Applicant is of no criminal antecedent. Prosecutrix is major. She has been held to be above 18 years of age in medical age determination by medical board. She in her statement under Sections 161 as well as 164 Cr.P.C. has said to be under her own volition with the applicant. There was consensual physical relation. Neither accusation of rape nor enticing or abduction are there. Rather, as per First Information Report, itself, the prosecutrix went along with preparation by taking money and educational record. It was a consensual fleeing and living. There is no likelihood of applicant's fleeing from course of justice or tempering with evidence, in case he is released on bail. Hence bail has been prayed for.

Learned counsel for the informant as well as learned AGA have vehemently opposed bail with this contention that the prosecutrix was minor with specific date of birth resulting to be of 16 years of age and after conversion marriage was performed with forged documents mentioning the age of the prosecutrix as 19 years.

Having heard learned counsel for both the parties, gone through the material placed on record it is apparent that in First Information Report itself fleeing was said to be with preparation, though, prosecutrix was said to be of 16 years but in medical age determination, by medical board, she is above 18

years. No incriminating statement, under Sections 161 and 164 Cr.P.C., against the applicant is there. Considering the nature of accusations, severity of the punishment in the case of conviction but without expressing any opinion on the merits of the case, this Court is of the view that the applicant may be enlarged on bail with certain conditions.

Let the applicant, Shaban, involved in above mentioned case crime number be released on bail on his executing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

1. The applicant will not tamper with the evidence.
2. The applicant will not indulge in any criminal activity.
3. The applicant will not pressurize/intimidate the prosecution witnesses and co-operate in the trial.
4. The applicant will appear regularly on each and every date fixed by the trial court unless his personal appearance is exempted through counsel by the court concerned.
5. The party shall file computer generated copy of such order downloaded from the official website of High Court, Allahabad.
6. The computer generated copy of such order shall be self attested by counsel of the party concerned.
7. 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.

In the event of breach of any of the aforesaid conditions, the court below will be at liberty to proceed to cancel his bail.

Order Date :- 17.2.2021

Deepak/