

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36810 of 2022

Applicant :- Prveen Kashyap

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

Counsel for Applicant :- Babita Upadhyay, Sanjeev Kumar Gaur

Counsel for Opposite Party :- G.A., Sakshi Patel, Shiv Naresh

Hon'ble Mrs. Sadhna Rani (Thakur), J.

As per learned A.G.A., service upon the first informant is sufficient. Though, the names of Ms. Sakshi Patel and Sri Shiv Naresh, learned counsel are shown in the cause list from the side of the first informant but no one has put in appearance on behalf of the first informant.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The accused- applicant Prveen Kashyap, is involved in Case Crime No. 103 of 2022, under Sections 363, 366, 376 I.P.C. and Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012, Police Station Lodha, District- Aligarh.

It is argued by the learned counsel for the applicant that as per the statement of the victim under Sections 161 and 164 Cr.P.C., she was a consenting party. She herself left her home along with the present applicant. They solemnized marriage and were living together as husband and wife. At the time of medical for the age determination of the victim x-ray was advised, but no x-ray has been done. As the girl is a consenting party and the applicant is languishing in jail since 04.06.2022, hence, prayer for bail is made.

Learned A.G.A. opposed the bail application and submitted that as per the certificate given by the Principal of Uchha Madhyamik Vidyalaya, Nahraula, Khair, Aligarh, the date of birth of the victim is 10.05.2006 and the incident is dated 02.06.2022, thus, on the date of incident the girl was minor, so her consent is of no significance and she cannot be said to be a consenting party. It is disclosed in the said certificate that during the term of class-8th, the name of the girl was dropped. Hence, prayer is made to reject the bail application.

From perusal of the record, it is clear that in the FIR, the victim is said to be 17 years of age and as per the certificate given by

the Principal of the school, the date of birth of the victim is 10.05.2006, which indicates that on the date of incident i.e. 01.06.2022, the victim was minor. Even if she left her home, solemnized marriage and had physical relations with the applicant with her consent, her consent being a consent of minor cannot be said to be of any significance. There is no evidence on record to show that the girl was major on the date of the incident.

Thus, after perusing the record in the light of submission advanced at the bar, taking overall view of the facts and circumstances of the case, the nature of accusation and the period of detention already undergone without commenting on the merit of the case, I do not find it a fit case for bail.

The bail application is hereby **rejected**.

Order Date :- 12.10.2022

Radhika