

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3172 of 2023

Applicant :- Dileep

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

Counsel for Applicant :- Devesh Pandey, Pratibha Jaiswal

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri B.P. Singh, learned AGA apprised the Court that on 11.1.2023 notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Pratibha Jaiswal, learned counsel for the applicant and Sri B.P. Singh, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 49 of 2022, under Sections 363, 366, 376 IPC and Section 5(1)/6 POCSO Act, Police Station Chopan, District Sonbhadra, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and according to the FIR applicant enticed away the daughter of the informant aged about 17 years.
5. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and actually victim herself had gone along with the applicant and also performed marriage with him and these facts are evident from her both the statements recorded under sections 161 and 164 Cr.P.C.
6. She further submitted that although from the school record of the victim, she was around 17 years old but infact she was major and even appearance wise, she looks like major.
7. She further submitted that it is a case of love affair and applicant is having no criminal history and he is in jail in the present matter since 15.5.2022 i.e. for almost one and half years.
8. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record victim was below 18 years old

girl but could not dispute the fact that during investigation her ossification test was not conducted and in both the statements recorded during investigation, she did not state anything against the applicant.

9. I have heard learned counsel for the parties and perused the record of the case.

10. However, from the perusal of the school record, it appears that victim is around 17 years at the time of incident but during investigation her ossification test was not conducted and she in her both the statements recorded under sections 161 and 164 Cr.P.C. categorically stated that she had gone along with the applicant on her own and had already performed marriage with him.

11. Legislative intent behind the POCSO Act is to protect the children from sexual abuse and not to punish for the consensual relationship. In my view by ignoring the statements of the victim the bail application of an accused should not be dismissed.

12. Further, law is settled that bail application should not be refused either for punitive or preventive purposes and provision of POCSO Act cannot be used for the purpose to restrain or curb the love relationship.

13. Further, applicant is having no criminal history and he is in jail in the present matter since 15.5.2022 i.e. for almost one and half years.

14. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

15. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

16. Let the applicant-Dileep, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

17. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

18. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.11.2023

Ankita