

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3887 of 2023

Applicant :- Akash

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

Counsel for Applicant :- Satish Kumar Tyagi, Kanjaanan Pyare Singh, Ramesh Kumar Pandey

Counsel for Opposite Party :- G.A., Mohd Aamir

Hon'ble Sameer Jain, J.

1. Heard Sri Ramesh Kumar Pandey, learned counsel for the applicant, Sri Mohd. Aamir, learned counsel for the informant and Sri Ghanshyam Mishra, learned Brief Holder for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 569 of 2022, under Sections 376, 506 IPC and 5/6 POCSO Act, Police Station Teelamodh, District Ghaziabad during pendency of the trial.

3. FIR of the present case was lodged against applicant on 28.10.2022 and according to the FIR applicant sexually exploited the daughter of the informant aged about 17 years when she was going to attend the school and he also prepared indecent video and photographs and threatened her to viral the same.

4. Learned counsel for the applicant submitted that entire story narrated in the FIR is totally false and actually the victim who is aged about 18 years loved the applicant and when this fact was revealed to the informant then he lodged FIR of the present case.

5. He further submits that although victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated against the applicant but even from her both the statements, it appears that she was having relationship with the applicant as in both the statements she stated that applicant had given her mobile and this fact clearly suggests that she retained the mobile given by the applicant because she was having friendship/relationship with him.

6. He further submits that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. not only

stated against the applicant but also against his father and two employees and stated that all committed rape with her and this fact clearly suggests that story narrated by the victim is totally false and no reliance can be placed on such version.

7. He further submits that even as per school record of the victim she was more than 17 years old and intentionally her ossification test was not conducted during investigation. He further submits that appearance wise victim looked like a major girl aged about 18 years and actually it is a case of love affair. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 01.11.2022 i.e. for last one year. He further submits that applicant and victim both were having relationship and when father of the victim witnessed them, then he lodged FIR against the applicant and his father.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is below 18 years old girl and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated against the applicant but could not dispute the fact that in both the statements victim also stated that even father of the applicant and his both employees also committed rape with her in the presence of each other and applicant is in jail since 01.11.2022 i.e. for last one year.

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

10. From the school record, it appears that victim was about 17 years old but during investigation her ossification test was not conducted and although in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. she stated against the applicant but from her both the statements it reflects that she also implicated the father of the applicant and two employees and stated that applicant, his father and his two employees committed rape with her.

11. The story narrated by the victim does not inspire confidence. Further, application is not having any criminal history and in the present matter he is in jail since 01.11.2022 i.e. for one year.

12. Further, although in both the statements recorded during investigation victim did not admit that she was having relationship with the applicant but she admitted that applicant given mobile to her, therefore, considering this fact, the argument advanced by learned counsel for the applicant that applicant and victim both

were having relationship and when father of the victim witnessed them then he lodged FIR and on his instigation victim during investigation started making allegation against the applicant and his father cannot be totally brushed aside at this stage.

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

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

15. Let the applicant - **Akash** 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.

16. 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.

17. 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

AK Pandey