

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5777 of 2023

Applicant :- Suraj

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

Counsel for Applicant :- Shujauddin, Mohd. Shaafi

Counsel for Opposite Party :- G.A., Shibli Naseem

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in revised call, however, learned AGA for the State is present.
2. Heard Sri Mohd. Shaafi, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 78 of 2022, under Sections 363, 366, 376-AB IPC & 5m/6 POCSO Act, Police Station- Swar, District- Rampur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant on 26.02.2022 under Sections 363, 366 IPC and according to the FIR, applicant enticed away the sister of the informant aged about 13 years.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually applicant never enticed away the sister of the informant and she herself had gone along with the applicant and this fact is evident from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.
6. He further submitted that however, as per the school record, victim was a child as per the provisions of POCSO Act but according to her, she was about 18 years' old and this fact is evident from her statement recorded under Section 164 Cr.P.C. He further submitted that from both the statements of the victim recorded during investigation, it appears that she was consenting party. He further submitted that applicant is also a young boy aged about 20 years and it is a case of love affair.

7. He further submitted that applicant is not having any criminal history and he is in jail since 15.03.2022 i.e. for more than one and half years.

8. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record of the victim, at the time of incident she was about 11 years' old, however, he fairly conceded that during investigation, her ossification test was not conducted and as per the informant, victim was aged about 13 years and as per the victim herself, she was about 18 years' old.

9. He further could not dispute the fact that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she herself had gone alongwith the applicant and also performed marriage with him.

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

11. However, as per the school record, at the time of incident, victim was hardly 11 years' old but according to the informant, age of the victim was around 13 years and victim during recording of her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. disclosed her age as 17 years and 17 years 11 months 20 days respectively and during investigation, admittedly her ossification test was not conducted, therefore, there are discrepancies in the age of the victim and, therefore, at this stage, merely on the basis of school record of the victim, it cannot be said that, victim was 11 years' old

12. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she herself had gone alongwith the applicant and also performed marriage with him and she disclosed her age as about 18 years in her statement recorded under Section 164 Cr.P.C., therefore, it appears to be a case of love affair.

13. The object of POCSO Act is to protect a child from the sexual abuse and not to punish the couple for love affair, in my view, by ignoring the statements of the victim recorded during investigation in such matters like present one, the bail application of accused should not be dismissed.

14. Further, law is settled that bail application should not be dismissed either for punitive or for preventive purposes.

15. Further, applicant is not having any criminal history and he is in jail since 15.03.2022 i.e. for more than one and half years.

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

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

18. Let the applicant- **Suraj** 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.

19. 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.

20. 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 :- 30.11.2023

KK Patel