

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8958 of 2023

Applicant :- Sahebe Alam @ Saddam Ali

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

Counsel for Applicant :- Abhay Krishn,Akansha Shukla,Kamala Kant,Vidya Dhar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Pradeep Kumar, learned A.G.A. for the State-respondent apprise the Court that notice has been served to the informant on 21.02.2023. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri Vidya Dhar Yadav, learned counsel for the applicant and Shri Pradeep Kumar, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.203 of 2022, under Sections 363, 366, 376 IPC & Sections 3/4 POCSO Act, Police Station Vindhyachal, District Mirzapur, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 04.11.2022 against applicant and according to the FIR, daughter of the informant aged about seventeen years had gone to purchase some item from her house but did not return and after enquiry informant came to know that applicant has enticed her daughter.

5. Learned counsel for the applicant submits that entire allegations made against applicant are totally false and actually victim is a

major aged about more than eighteen years and she herself had gone along with the applicant and this fact is evident from her both the statements recorded under Sections 161 and 164 Cr.P.C.

6. He further submits that as per C.M.O. concerned, the age of the victim was between 18-20 years however according to her class 5th mark-sheet, she was fifteen years of age but considering the radiological age of the victim, it appears that her parents disclosed her wrong date of birth in her school record.

7. He further submits that it is a case of love affair and applicant is not having any criminal history and he is in jail in the present matter since 08.11.2022 i.e. for last more than a year.

8. Per contra, learned A.G.A. opposed the prayer for bail and submits that as per school record, victim was minor at the time of incident aged about fifteen years, therefore, his consent is immaterial but he could not dispute the fact that as per C.M.O. concerned, the age of the victim was between 18-20 years. He further could not dispute the fact that victim did not make any allegation against the applicant in her both the statements recorded during investigation.

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

10. However, as per class 5th mark-sheet of the victim at the time of incident she was fifteen years old but according to the C.M.O. concerned, her radiological age was between 18-20 years and therefore, I find force in the argument advanced by learned counsel for the applicant that at this stage, it cannot be said that at the time of incident victim was below eighteen years old girl.

11. Further, victim in her both the statements recorded under Sections 161 and 64 Cr.P.C. stated that she herself had gone alongwith the applicant and her consent is quite apparent from her both the statements recorded during investigation.

12. Further, it appears to be a case of love affair and applicant is not having any criminal history and he is in jail in the present matter since 08.11.2022 i.e. for last more than a year.

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- **Sahebe Alam @ Saddam Ali**, 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 :- 6.12.2023

Zafar