

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9998 of 2023

Applicant :- Murtib Rahman @ Mutiurrahman @ Bobby

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

Counsel for Applicant :- Vikrant Pandey, Kaushal Mishra, Sarvjeet Kumar, Shubham Dwivedi, Subhash Chandra Upadhyay

Counsel for Opposite Party :- G.A., Subhash Chandra Pandey

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed on behalf of the applicant as well as counter affidavit filed on behalf of the informant are taken on record.
2. Heard Sri Kaushal Mishra, learned counsel for the applicant, Sri Subhash Chandra Pandey, learned counsel for the informant and Sri Ghanshyam Mishra, learned brief holder for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 519 of 2022, under Sections 363, 376 IPC & 3/4 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 and according to the FIR, applicant enticed away the daughter of the informant aged about 14 about.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and from the perusal of the statement of the victim recorded under Section 161 Cr.P.C., it appears that she herself had gone along with the applicant and she did not make any allegation of rape against the applicant and when her statement was recorded under Section 164 Cr.P.C. then she again stated that she had gone along with the applicant according to her own wish, however, she stated that physical relationship was developed between her and applicant with her consent.
6. He further submitted that it appears to be a case of love affair, although, as per the transfer certificate of the schools of the victim,

it appears that victim is about 14 years' old but actually she is more than 18 years' old and intentionally during investigation, her ossification test was not conducted.

7. He further submitted that recently the Supreme Court in case of ***P.Yuvaprakash Vs. State Rep. By Inspector of Police (Criminal Appeal No.(S) 1898 of 2023***, observed that on the basis of transfer certificate, age of the victim cannot be determined and, therefore, at this stage merely on the basis of transfer certificate issued by the schools of the victim, it cannot be said that victim was 14 years' old at the time incident.

8. He further submitted that applicant is not having any criminal history and he is in jail since 13.01.2023 i.e. for more than nine months.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per the transfer certificate issued by the school, victim was hardly 14 years' old at the time of incident and, therefore, her consent is immaterial but both the counsels could not dispute the fact that victim in her statement recorded under Section 161 Cr.P.C. did not state that any physical relationship was made between applicant and her. However, learned counsel for the informant further pointed out that apart from the present case, applicant is also having criminal history of one case of Section 307 IPC.

10. I have heard both the parties and perused the record of the case.

11. Although, from the transfer certificate issued by the schools of the victim, it appears that victim was around 14 years' old at the time of incident but in view of the law laid down by the Apex Court in the case of ***P.Yuvaprakash(supra)***, on the basis of transfer certificate, victim cannot be said to be child in view of the provisions of POCSO Act, therefore, I find force in the argument advanced by learned counsel for the applicant that there is no evidence at this stage, on the basis of which it can be said that victim was child in view of the provisions of POCSO Act as except transfer certificate, there is no other evidence with regard to age of the victim on record and during investigation, her ossification test was not conducted.

12. Further, victim in her statement recorded under Section 164 Cr.P.C. categorically stated that she had gone along with the applicant according to her own wish and with her consent physical

relationship was developed between them and in the statement recorded under Section 161 Cr.P.C., although, she stated that she had gone along with the applicant on her own but in her statement recorded under Section 161 Cr.P.C. she did not state that any physical relationship was developed between her and applicant.

13. Further, applicant is not having any criminal history and he is in jail since January, 2023 i.e. for more than nine months.

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- **Murtib Rahman @ Mutiurrahman @ Bobby** 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 :- 12.10.2023

KK Patel