

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12766 of 2023

Applicant :- Pankaj Kumar

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

Counsel for Applicant :- Rajneesh Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Ravi Kant Kushwaha, learned AGA for the State apprised the Court that notice has been served upon the informant on 26.03.2022. Despite service of notice, none present on behalf of the informant.
3. From the record, it reflects that technically this is second bail application as first bail application of the applicant has been dismissed for non prosecution on 27.01.2023 and order passed on first bail application has been annexed as Annexure-1 to the affidavit.
4. Heard Sri Rajneesh Tripathi, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State.
5. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 886 of 019, under Sections 363, 366-A, 376 IPC and Section 3/4 POCSO Act, Police Station Dhoomanganj, District Prayagraj during pendency of the trial.
6. FIR of the present case was lodged against applicant and his family members on 21.08.2019 under Sections 363, 366A IPC and according to the FIR on 19.08.2019 applicant with the help of his family members abducted the niece of the informant aged about 16 years.
7. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim and applicant both were having love affair and victim herself had gone along with applicant but after recovery

under pressure of her parents she started making allegation of rape against the applicant.

8. He further submits that victim was recovered after ten days when she was standing along with applicant and recovery memo has been annexed as Annexure-3 to the affidavit and from its perusal it could not be reflected that she was not consenting party.

9. He further submits that however as per school record victim was around 16 years old at the time of incident but according to CMO concerned her radiological age was found between 18-20 years, therefore, it appears that her wrong date of birth has been mentioned in the school record by her parents.

10. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 26.08.2019 i.e. for last more than four years.

11. Per contra, learned AGA opposed the prayer for bail and submits that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against applicant but could not dispute the fact that from the recovery memo, it appears that when she was recovered then she was standing along with applicant and recovery memo does not suggests that applicant forcibly detained her. He further could not dispute the fact that applicant is not having any criminal history and in the present matter he is in jail since since 26.08.2019 i.e. for last more than four years.

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

13. However, from the school record, it appears that at the time of incident victim was about 16 years old girl and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape and abduction against the applicant but from her ossification test report, it appears that her radiological age was found between 18-20 years.

14. Further, from the recovery memo, which has been annexed along with instant bail application, it appears that victim was recovered after ten days while she was standing along with applicant and from the recovery memo it could not be reflected that applicant forcibly detained her, therefore, the defence taken by the applicant cannot be completely ruled out at this stage.

15. Further, applicant is not having any criminal history and in the present matter he is in jail since 26.08.2019 i.e. for last more than four 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 - **Pankaj Kumar** 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 :- 7.12.2023

AK Pandey