

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16189 of 2022

Applicant :- Jai Prakash Kushwaha

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

Counsel for Applicant :- Hare Krishna Tripathi, Raghavendra Pati Tripathi, Rajendra Prasad Tiwari, Vinay Kumar Tiwari

Counsel for Opposite Party :- G.A., Shailendra Singh

Hon'ble Sameer Jain, J.

1. Heard Sri Vineet Tiwari, Advocate, holding brief of Sri Rajendra Prasad Tiwari, learned counsel for the applicant, Sri Shailendra Singh, learned counsel for the informant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 171 of 2021, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Barua Sagar, District- Jhansi, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and according to the FIR, the daughter of the informant was the student of Class-12th and on 20.09.2021 she had gone to her college but did not return and when informant searched her then he came to know that applicant has enticed her away.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and although, applicant was the teacher of the victim but applicant and victim both loved each other and victim according to her own wish had gone along with the applicant and this fact is evident from her statement recorded under Section 161 Cr.P.C. but when her statement was recorded under Section 164 Cr.P.C. then she changed her earlier version and categorically stated that applicant never committed rape with her and she also denied the fact that she was pregnant with the applicant, although, this fact has been stated by her prior in her statement recorded under Section 161 Cr.P.C.
5. He further submitted that applicant is not having any criminal history and he is in jail since 15.11.2021 i.e. for almost two years.

6. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant being teacher of the victim misused his position and first enticed her away and thereafter sexually exploited her and due to his sexual exploitation, she also conceived.

7. Learned counsel for the informant further submitted that although, victim in her statement recorded under Section 164 Cr.P.C. stated that applicant neither committed rape with her nor she is pregnant with him but in the statement recorded under Section 161 Cr.P.C. she stated that she is pregnant with the applicant and her medical report also suggests that she was pregnant and therefore, it appears that she was under the influence of the applicant, therefore, she stated in favour of the applicant and, therefore, considering the nature of allegation and position of the applicant, he should not be released on bail.

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

9. However, from the record, it reflects that applicant is in jail for almost two years in the present matter and victim in her statement recorded under Section 164 Cr.P.C. stated that applicant did not commit rape with her and also stated that she is not pregnant but earlier in her statement recorded under Section 161 Cr.P.C. she stated that she had gone along with the applicant and she was also pregnant with him.

10. Further, subsequently when medical examination of the victim was conducted then it was revealed that she was having pregnancy of about 14 weeks, therefore, it appears that victim did not disclose the correct facts in her statement recorded under Section 164 Cr.P.C..

11. Further, applicant was the teacher of the victim and he was about 30 years' old man while victim was hardly 17 years' old, therefore, I find force in the argument advanced by learned AGA and learned counsel for the informant that applicant misused his position being teacher of the victim, therefore, I am not inclined to release him on bail.

12. Accordingly, the instant bail application is ***rejected***.

13. 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.

14. However, considering the fact that applicant is in jail for almost two years, trial court is directed to conclude the trial of the case within a period of eight months from the date of production of certified copy of this order, strictly as per the provisions of Section 35 POCSO Act and Section 309 Cr.P.C., if there is no legal impediment.

Order Date :- 30.10.2023

KK Patel