

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20779 of 2023

Applicant :- Rohit Kumar

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

Counsel for Applicant :- Rajiv Sisodia, Nadeem

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Ghanshyam Mishra, learned Brief Holder for the State apprised the Court that notice has been served upon the informant on 01.05.2023. Despite service of notice, none present on behalf of the informant.
2. Heard Sri Rajiv Sisodia, learned counsel for the applicant and Sri Ghanshyam Mishra, learned Brief Holder for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 0007 of 2023, under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station Seohara, District Bijnor during pendency of the trial.
4. FIR of the present case was lodged against applicant and according to the FIR applicant enticed away the minor daughter of the informant.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and actually victim herself had gone along with the applicant and with her consent physical relationship were developed between both of them and both these facts are evident from the statement of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.
6. He further submits that although as per school record at the time of incident victim was around sixteen and half years old but during investigation her ossification test was not conducted. He further submits that actually victim is more than 18 years old and it appears that her wrong date of birth has been mentioned in the school record as look wise she looked like a major girl.
7. He further submits that it is a case of love affair, which is

apparent from the statements of the victim recorded during investigation. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 18.01.2023 i.e. almost ten months.

8. Per contra, learned Brief Holder for the State opposed the prayer for bail and submitted that as per school record, victim appears to be sixteen and half years old but he fairly conceded that during investigation her ossification test was not conducted and victim in her both the statements recorded during investigation admitted that she loved the applicant and she on her own had gone along with applicant and physical relationship were developed between both of them with her consent.

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

10. However, from the school record of the victim, it appears that she was around sixteen and half years old but during investigation ossification test of the victim was not conducted.

11. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she on her own had gone along with applicant and she loved the applicant and physical relationship were developed between her and the applicant with her consent, therefore, from her statements, it reflects that it is a case of love affair.

12. The object behind POCSO Act is to protect the child from sexual abuse and not to punish for love. In my view, by ignoring the statements of the girl (victim) recorded during investigation, the liberty of bail of an accused should not be curtailed.

13. Further, the law is settled that bail should not be dismissed either for punitive purpose or preventive purpose.

14. Further, applicant is not having any criminal history and in the present matter he is in jail since 18.01.2023 i.e. almost ten months.

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

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

17. Let the applicant - **Rohit 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.

18. 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.

19. 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 :- 1.11.2023

AK Pandey