

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30556 of 2021

Applicant :- Mangru Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamlesh Kumar Singh

Counsel for Opposite Party :- G.A., Ashutosh Kumar Pandey

Hon'ble Sameer Jain, J.

1. Counter affidavit filed today on behalf of the State is taken on record.
2. Heard Sri Kamlesh Kumar Singh, learned counsel for the applicant, Sri Ashutosh Kumar Pandey, learned counsel for the informant and Sri Ravi Kant Kushwaha, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 76 of 2021, under Sections 363, 366, 376, 504, 506 IPC and Section 3/4 POCSO Act and Section 3(2)5 SC/ST Act, Police Station Sakaldiha, District Chandauli during pendency of the trial.
4. FIR of the present case was lodged on 19.05.2021 against applicant and co-accused Runa Sharma and according to the FIR on 03.05.2021 applicant enticed away the sister of the informant with the help of co-accused Runa Sharma and under false promise of marriage made physical relationship with her and on 05.05.2021 when his sister informed that applicant and co-accused are making plan to sell her then they arrived at the place disclosed by the victim and took her back and thereafter FIR of the present case was lodged.
5. Learned counsel for the applicant submitted that entire story narrated by the informant in the FIR is totally false and even after recovery of the victim on 05.05.2021 FIR of the present case was lodged on 19.05.2021 i.e. after about two weeks and this fact shows that totally on the basis of false allegation applicant has been made accused in the present matter.

6. He further submits that actually victim and applicant both were having love affair and victim had gone along with applicant according to her own wish and when she returned on 05.05.2021 then a compromise was executed between both the parties, which has been annexed as Annexure-7 to the affidavit and thereafter victim was handed over by the police to the informant and Supurdaginama has also been annexed as Annexure-8 to the affidavit but subsequently some dispute arose between both the parties and thereafter on 19.05.2021 the FIR of the present case was lodged.

7. He further submits that as per ossification test report, victim is 19 years old, therefore, she was major at the time of incident and except the ossification test report there is no evidence on record which can show her age. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 20.05.2021 i.e. for almost two and half years.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail but could not dispute the fact that a compromise was executed between both sides on 05.05.2021 after that victim was handed over to the informant of the case and FIR was lodged on 19.05.2021 i.e. after about two weeks. They further could not dispute the fact that as per ossification test report victim was aged about 19 years but he submitted that as per school record victim was around 17 years old.

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

10. Although, from the school record, it reflects that victim was 17 years old at the time of incident but according to her ossification test report, she was about 19 years old. Further, however, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant committed rape with her but story narrated by her does not appear to be convincing.

11. Further, from Annexures 7 and 8 to the affidavit filed in support of present application, it reflects that after recovery of the victim a compromise was executed between both the parties on 05.05.2021 and thereafter victim was handed over to the informant but in spite of that FIR of the present case was lodged on 19.05.2021, therefore, defence taken by the applicant that after Supurdaginama and compromise executed between the parties some dispute arose between both sides and thereafter FIR of the present case was lodged after about two weeks cannot be

completely brushed aside at this stage.

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

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

14. Let the applicant - **Mangru Sharma** 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.

15. 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.

16. 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 :- 17.10.2023

AK Pandey