

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27902 of 2022

Applicant :- Vinod

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

Counsel for Applicant :- Mohammad Asif, Ajay Kumar Gupta

Counsel for Opposite Party :- G.A., Kuldeep Johri, Pranat Pal
Tripathi, Shivesh Mishra

Hon'ble Sameer Jain, J.

1. Sri Vikas Tripathi Advocate submits that he is holding brief of Sri Kuldeep Jauhari, learned counsel for the applicant but due to mistake, name of Sri Kuldeep Jauhari has been shown in the cause list as counsel for the informant and infact he is counsel for the applicant.

2. Heard Sri Sri Vikas Tripathi Advocate holding brief of Sri Kuldeep Jauhari, learned counsel for the applicant; Sri Shivesh Mishra, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 80 of 2022, under Sections 363, 366, 376(2)N, 376(3) IPC & 4(2), 6 POSCO Act and 3(2)5, 2(2) SC/ST Act, Police Station Nawabganj, District Bareilly, during pendency of the trial in the court below.

4. FIR of the present case was lodged against the applicant and according to the FIR, applicant has enticed away the daughter of the informant aged about 14 and half years.

5. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and actually victim at the time of incident was more than 18 years old and even appearance wise, she looked like major and both applicant and victim loved each other but when victim had gone alongwith the applicant, according to her own wish then totally on the basis of false facts, applicant has been made accused in the present matter.

6. He further submitted that even from the perusal of the statement of the victim recorded under section 161 Cr.P.C., it appears that victim had already performed marriage with the applicant, when

her statement under section 164 Cr.P.C. was recorded then however she did not narrate that her marriage has already performed with the applicant but she categorically stated that she on her own had gone along with the applicant and from her statement under section 164 Cr.P.C., it also reflects that physical relationships were developed between applicant and victim according to her own wish.

7. He further submitted that although as per the school record age of the victim was around 14 and half years but according to the CMO, her radiological age was 16 years and at this stage, it cannot be said that she was below 18 years of age and it appears that her wrong date of birth has been mentioned in the school record.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 5.3.2022 i.e. for more than one and half years.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as according to the school record victim was around 14 and half years old and even as per CMO, report she was around 16 years, therefore, even if she was consenting party then also it hardly matters but could not dispute the fact that victim in her statement recorded under section 164 Cr.P.C. did not state anything against the applicant and in the statement recorded under section 161 Cr.P.C., she herself stated that she had performed marriage with the applicant and applicant is in jail in the present matter since March, 2022.

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

11. However, from the school record of the victim, it appears that she was around 14 and half years and even according to the CMO, at the time to incident, she was about 16 years old but as there can be variation of two years either side, therefore, possibility cannot be ruled out that she might be more than 18 years at that time.

12. Further, in her statement recorded under section 164 Cr.P.C., victim did not state anything against the applicant and in the statement recorded under section 161 Cr.P.C. she stated that she had performed marriage with the applicant and from the record it reflects that applicant had already performed marriage with her.

13. Further, applicant is having no criminal history and he is in jail

in the present matter since March, 2022 i.e. for more than one and half years.

14. Law is settled that bail application should not be dismissed either punitive or preventive purposes.

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**.

18. Let the applicant-**Vinod** 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 :- 28.10.2023

Ankita