

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34174 of 2022

Applicant :- Gaurav Singh

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

Counsel for Applicant :- Ramesh Kumar, Brijesh Kumar Yadav, Rakesh Kumar Verma, Ram Jatan Yadav, Shyam Sunder Mishra

Counsel for Opposite Party :- G.A., Lalit Kumar Srivastava

Hon'ble Sameer Jain, J.

1. Heard Sri Shyam Sunder Mishra and Ram Jatan Yadav, learned counsels for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State. However, none present on behalf of the informant even in the revised call.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 72 of 2022, under Sections 363, 366, 328, 376, 506 IPC and Section 3/4 POCSO Act, Police Station Bah, District Agra during pendency of the trial.

3. FIR of the present case was lodged against applicant and according to the FIR applicant enticed away the niece of the informant aged about 16 years.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually it is a case of love affair and applicant and victim both are aged about 19 years and victim on her own wish had gone along with applicant and this fact is evident from her statement recorded under Section 161 Cr.P.C.

5. He further submits that when her statement under Section 164 Cr.P.C. was recorded then under pressure of informant she changed her earlier version and stated that applicant abducted her and committed rape with her. He further submits that in the statement recorded under Section 164 Cr.P.C. she also stated that she accompanied the applicant up to Noida and this fact again shows that she according to her own wish had gone along with applicant.

6. He further submits that as per school record of the victim, it

appears that at the time of incident she was around 16 years and three months old but during investigation her ossification test was not conducted. He further submits that appearance wise victim looked like major girl aged about 18 years. He further submits that it is a case of love affair and applicant is in jail since 30.04.2022 i.e. for almost one and half years.

7. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim was around 16 years old and she in her statement recorded under Section 164 Cr.P.C. made allegation that applicant abducted and raped her but he could not dispute the fact that as per the statement recorded under Section 161 Cr.P.C. she on her own had gone along with applicant. He further could not dispute the fact that applicant is also teenage boy aged about 19 years and he is in jail since 30.04.2022 i.e. for almost one and half years.

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

9. Although, from the school record of the victim, it reflects that she was around 16 years old and she in her statement recorded under Section 164 Cr.P.C. stated that applicant abducted her and committed rape with her against her wishes but earlier when her statement under Section 161 Cr.P.C. was recorded then she categorically stated that she on her own had gone along with applicant and with her consent physical relationship was developed and during investigation ossification test of the victim was not conducted.

10. Further, from the record it also reflects that applicant is also teenage boy aged about 19 years, therefore, it appears to be a case of teenage love.

11. Further, law is settled that bail should not be dismissed either for punitive purpose or for preventive purpose and applicant is in jail since 30.04.2022 i.e. for almost one and half years.

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 - **Gaurav Singh** 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