

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41867 of 2020

Applicant :- Govinda

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit, Omvir Singh Rajpoot, Ram Swaroop, S.K. Mathur

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

Hon'ble Sameer Jain, J.

1. Sri Omvir Singh, Rajpoot, learned counsel for the applicant submitted that pursuant to the order dated 11.10.2023, he sought fresh instructions from the applicant and after obtaining the same, he is filing fresh power on his behalf.
2. Heard Sri Omvir Singh, Rajpoot, learned counsel for the applicant; Sri Ajeet Singh, learned counsel for the informant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 122 of 2020, under Sections 376AB, 506 IPC and 5M/6 POCSO Act, Police Station Deedarganj, District Azamgarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant on 28.7.2020 and according to the FIR applicant after taking the daughter of the informant aged about 12 years behind the temple committed rape with her.
5. Learned counsel for the applicant submitted that the entire allegation of rape made against the applicant are totally false and baseless and actually victim is aged about 18 years and applicant is also aged about 20-21 years old and both were having affair and when they were alone, in the meantime, mother of the victim arrived and thereafter FIR of the present case was lodged.
6. He further submitted that from the ossification test report of the victim it also reflects that she was around 16-18 years old and this fact belies the fact that victim was around 12 years old.
7. He further submitted that although victim in her statement recorded under section 161 Cr.P.C. repeated the version of the FIR and stated that applicant committed rape with her behind

the temple but in her statement recorded under section 164 Cr.P.C. she changed the place of incident and stated that applicant committed rape in his home and this fact again shows that on the basis of false allegation of rape applicant has been made accused in the present matter.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 29.7.2020 i.e. for more than three years.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that from the rejection order it appears that even as per school record of the victim she was around 12 years old and she made allegation of rape against the applicant in her both the statements recorded under sections 161 and 164 Cr.P.C. but both the counsels could not dispute the fact that as per the x-ray report of the victim, her age was about 16-18 years and there are material contradictions in the place of incident in both the statements of the victim record under sections 161 and 164 Cr.P.C.

10. They further could not dispute the fact that applicant is not having any previous criminal history and he is in jail in the present matter since 29.7.2020 i.e. for more than three years.

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

12. However, as per allegation, victim was around 12 years old and applicant committed rape with her and victim also stated in her both the statements recorded during investigation that applicant committed rape with her but from the ossification test report of the victim it appears that her age was around 16-18 years old.

13. Further in the statement recorded under section 161 Cr.P.C. victim stated that applicant committed rape behind the temple but when her statement under section 164 Cr.P.C. was recorded then she stated that applicant committed rape in his house and therefore, it appears to be material contradictions in both the statements of the victim with regard to the place of incident.

14. Further, applicant is having no criminal history and he is in jail in the present matter since 29.7.2020 i.e. for more than three years.

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-**Govinda**, 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 :- 31.10.2023

Ankita