

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 48296 of 2021

**Applicant :-** Vikki @ Rahim

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Vikash Chandra Tiwari, Rajendra Kumar Misra, Ram Krishna Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain, J.**

1. Supplementary affidavit filed today on behalf of the applicant, is taken on record.
2. On 29.11.2021, notice was issued to the opposite party no. 2 though CJM concerned. As per office report dated 5.1.2022, notice has been served to the informant through his wife. Learned AGA also submitted that notice has been served to the informant on 27.2.2023. Despite service of notice none appeared on behalf of the informant.
3. Heard Sri Vibhendu Mishra, Advocate Holding brief of Sri R. K. Mishra, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 94 of 2021, under Sections 363, 328, 376 IPC and 3/4 POCSO Act, Police Station Vijay nagar, District Ghaziabad, during pendency of the trial in the court below.
5. FIR of the present case was lodged against the applicant and according to the FIR applicant enticed away the daughter of the informant aged about 15 years.
6. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and actually victim and applicant both were of same age group and also studied in the same school and victim had gone alongwith the applicant but after recovery under pressure of her parents she started making allegation of rape against the applicant.
7. He further submitted that story narrated by the victim appears to be quite absurd as according to the victim, applicant forcibly

kidnapped her and confined her for almost three weeks and continuously committed rape with her.

8. He further submitted that actually she according to her own stayed alongwith the applicant and applicant never made physical relationship with her.

9. He further submitted that according to the school records, date of birth of the victim is 12.9.2005 and date of birth of the applicant is 20.1.2003 and therefore, both were teenagers and it appears to be a case of teenage love.

10. He further submitted that applicant is in jail in the present matter since 27.2.2021 i.e. for last more than two and half years and till date trial of the case could not be concluded.

11. Per contra, learned AGA opposed the prayer for bail and submitted that victim was hardly 15 and half years old and she in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but he could not dispute the fact that at the time of incident, applicant was also hardly 17-18 years old and he is in jail in the present matter for last two and half years.

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

13. From the perusal of the record, it reflects that victim is about 15 and half years old and she made allegation of rape against the applicant but it appears from the record that both the applicant and victim were of same age group and at the time of incident, applicant was also about 18 years old and therefore, argument advanced by learned counsel for the applicant cannot be completely brushed aside, at this stage.

14. Further, applicant is in jail in the present matter since February, 21 i.e. for more than two and half years.

15. Therefore, considering the facts and circumstances of the case, discussed above, particularly age of the applicant and his long incarceration of more than two and half years, 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- **Vikki @ Rahim**, 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