

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36272 of 2023

Applicant :- Pradeep Rai

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

Counsel for Applicant :- Mohammad Waseem

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter pertains to the provisions of Section 376 (3) IPC, therefore, notice was issued to the informant of the case.
2. As per office report dated 19.10.2023 notice has been served to the informant. Even as per learned AGA, notice has already been served to the informant of the case on 18.8.2023.
3. Despite service of notice, none appeared on behalf of the informant.
4. Heard Sri Mohammad Waseem, learned counsel for the applicant and Sri Tanay Kumar, learned AGA, for the State.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.24 of 2023, under Sections 363, 366 and 376 (3) IPC and Section 5L/6 POCSO Act, Police Station Mirza Murad, District Varanasi during pendency of the trial.
6. FIR of the present case was lodged against the applicant under Sections 363 and 366 IPC and according to the FIR, applicant has enticed away the sister of the informant aged about 16 years.
7. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually sister of the informant is a major girl and she according to her

own wish had gone along with applicant and applicant and victim both have performed marriage.

8. He further submits that even in the statements recorded under Sections 161 and 164 Cr.P.C. victim stated that she according to her own wish had gone along with applicant and had performed marriage with him.

9. He further submits that although as per school record victim was around 16 years old but during investigation her ossification test could not be conducted and appearance wise victim looks like more than 18 years old girl.

10. He further submits that it is a case of love affair and applicant is also a young boy aged about 20-21 years old.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 3.3.2023.

12. Per contra, learned AGA opposed the prayer for bail and submits that victim is about 16 years old and, therefore, her consent is immaterial but he could not dispute the fact that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. did not state anything against the applicant and during investigation her ossification test could not be conducted.

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

14. However, from the certificate issued by the Principal of Junior High School the date of birth of the victim is 1.1.2007 and she was around 16 years old at the time of incident but from the

perusal of the certificate issued by the Principal it appears that her admission was taken in the Institute temporarily in Class-VI and and it is not on record that what was the basis of her date of birth mentioned in the school record.

15. Further, during investigation ossification test of the victim could not be conducted.

16. Further, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that she herself had gone along with applicant and had also performed marriage with him.

17. Law is settled that bail application should not be dismissed either for punitive or preventive purposes and it appears to be a case of love affair.

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

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

20. Let the applicant-**Pradeep Rai** 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.

21. 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.

22. 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 :- 26.10.2023
SKM