

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48423 of 2021

Applicant :- Alok @ Logva

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Yadav, Satish Chandra Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Pradeep Kumar, learned AGA apprised the Court that notice has been served upon the informant on 20.11.2023. Even as per office report dated 17.11.2023 notice has been served upon the informant. Despite service of notice, none present on behalf of the informant.
2. Compliance affidavit filed today on behalf of the State is taken on record.
3. Heard Sri Satish Chandra Tiwari, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.
4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 665 of 2021, under Sections 363, 366A, 376(1) IPC and Section 3/4 POCSO Act, Police Station Dhoomanganj, District Prayagraj during pendency of the trial.
5. FIR of the present case was lodged against applicant and his brother and according to the FIR applicant enticed away the daughter of the informant aged about 13 years with the help of his brother.
6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually daughter of the informant was major at the time of incident and she herself had gone along with applicant and also performed marriage with him and when the statement of the victim was recorded under Section 161 Cr.P.C. then she categorically stated that she herself had gone along with applicant.

7. He further submits that mother of the victim filed Habeas Corpus Writ Petition No. 365 of 2021 before this Court for release of victim in her favour as victim was residing with the applicant as his wife and on 30.06.2021 victim appeared before this Court and she stated that she is major and illiterate and is living with her husband namely Alok (applicant) and thereafter her ossification test was conducted and statement under Section 164 Cr.P.C. was recorded. He placed the order passed in habeas corpus writ petition during the course of argument, which is taken on record and marked as 'A'.

8. He further submits that in the statement recorded under Section 164 Cr.P.C. she changed her earlier version under the pressure of her mother and stated that applicant abducted her and committed rape upon her. He next submits that as per ossification test of the victim she was about 17 years old.

9. He further submits that at present it cannot be said that victim is child below 18 years of age. He further submits that there are material contradictions in the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. He further submits that her statement recorded under Section 164 Cr.P.C. is contradictory to her earlier statement given by her before this Court in habeas corpus petition on 03.06.2021. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 29.06.2021 i.e. for last about two and half years.

10. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. From the record, it reflects that victim in her statement recorded under Section 161 Cr.P.C. stated that on her insistence applicant has taken her and thereafter when mother of the victim filed habeas corpus petition before this Court then before this Court victim stated that she at present is residing with her husband i.e. applicant and she is illiterate girl and thereafter on the direction of this Court her ossification test was conducted and her statement under Section 164 Cr.P.C. was recorded.

13. As per ossification test report of the victim, she was about 17 years old. In the statement recorded under Section 164 Cr.P.C. she changed her earlier version recorded under Section 161 Cr.P.C. and

stated that applicant abducted her and also committed rape upon her but her statement recorded under Section 164 Cr.P.C. is contrary to her earlier statement recorded under Section 161 Cr.P.C. and also contrary to her statement given before this Court in habeas corpus writ petition on 30.06.2021.

14. Further, applicant is not having any criminal history and in the present matter he is in jail since 29.06.2021 i.e. for last about two and half 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 - **Alok @ Logva** 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 :- 6.12.2023

AK Pandey