

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37656 of 2023

Applicant :- Brijesh Paswan @ Sonu

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

Counsel for Applicant :- G.S. Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter pertains to provisions of Section 376(3) I.P.C. and POCSO Act, therefore, notice was issued to the informant of the case.
2. As per office report dated 26.10.2023, notice has been served to the informant through his heir. Even learned A.G.A. apprise the Court that notice has been served to the informant on 23.08.2023. Despite service of notice none appeared on behalf of the informant.
3. Pursuant to the order dated 26.10.2023 passed by this Court, the Ossification Test Report of the victim has been received and same has been placed on record and marked as flag "B".
4. Heard Shri G. S. Chauhan, learned counsel for the applicant, Shri Pradeep Kumar, learned AGA for the State-respondent.
5. The instant application has been filed seeking release of the applicant on bail in Case Crime No.311 of 2023, under Sections 363, 366, 376(3) I.P.C. and Sections 5J(ii)/6 of the POCSO Act, 2012, Police Station Kotwali, District Ghazipur, during pendency of the trial in the court below.
6. FIR of the present case was lodged on 25.06.2023

against applicant and according to the FIR, on 24.06.2023 applicant enticed away the daughter of the informant aged about fifteen years, who studied in class 8th.

7. Learned counsel for the applicant submits that on the basis of false allegation, applicant has been made accused in the present matter and actually victim herself had gone alongwith the applicant and this fact is evident from her both the statements recorded under Sections 161 and 164 Cr.P.C. He further submits that in her both the statements recorded during investigation, victim stated that she loved the applicant and she is also having pregnancy of three months from him.

8. He next submits that however as per the school record, the age of the victim was about fifteen years but in fact she was a major girl about eighteen years and even appearance wise, she looked like a major girl. He next submits that considering the peculiar facts and circumstances of the case, this Court directed the court concerned for conducting the Ossification Test of the victim and the Ossification Test Report of the victim is on record, which shows that her radiological age is between 16-17 years and therefore, at this stage precisely it cannot be said that victim was below eighteen years old girl.

9. He next submits that it is a case of love affair and applicant is not having any criminal history and he is in jail in the present matter since 28.06.2023, therefore, he may be released on bail.

10. Per contra, learned AGA opposed the prayer for bail and submits that as per school record at the time of incident victim was hardly fifteen years old and therefore,

her consent is immaterial. However, he could not dispute the fact that it is a case of love affair and as per the Ossification Test Report of the victim, her radiological age is found between 16-17 years.

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

12. However, as per the school record at the time of incident victim was about fifteen years old but in her both the statements recorded under Sections 161 and 164 Cr.P.C., she disclosed her age about eighteen years and in her both the statements, she did not make allegation against the applicant and stated that she herself had gone alongwith the applicant and also stated that she is also having pregnancy of three months from the applicant. She further stated that she loved the applicant, therefore, it appears to be a case of love affair.

13. On the direction given by this Court, the Ossification Test of the victim was conducted and according to the Ossification Test Report, it appears that the radiological age of the victim is between 16-17 years, therefore, I find force in the argument advanced by learned counsel for the applicant that at this stage precisely it cannot be said that victim was well below eighteen years.

14. Further, the object of the POCSO Act is to protect the child from sexual abuse and not be punish the accused for love affair. In my considered view by ignoring the statements of the victim recorded during investigation, it is not proper to dismiss the bail application of an accused.

15. Further, law is settled that bail application should not be dismissed either for preventive or punitive purposes.

16. Further, applicant is not having any criminal history and he is in jail in the present matter since 28.06.2023.

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

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

19. Let the applicant-**Brijesh Paswan @ Sonu**, 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.

20. 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.

21. 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 :- 20.11.2023

Zafar