

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39345 of 2023

Applicant :- Aadil

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

Counsel for Applicant :- Vijay Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA apprised the Court that on 30.09.2023 notice has been served upon the informant. Despite service of notice, none present on behalf of the informant.
2. On 15.09.2023 Special Judge, POCSO Act/C.J.M., Hapur was directed to get the ossification test of the victim conducted through C.M.O., Hapur by the board of three doctors within a period of three weeks.
3. As per office report dated 18.10.2023, the report of concerned C.J.M. has been received and it is on record, which is in sealed envelop and on the direction of the Court, the sealed envelop was opened for the perusal.
4. After opening the envelop, the age certificate issued by C.M.O. concerned was received and according to the age certificate, the age of the victim was about 15 years.
5. Office is directed to retain the photocopy of the C.M.O. report received today and return the original copy to the court concerned within ten days.
6. Supplementary affidavit filed today on behalf of the applicant is taken on record.
7. Heard Sri Vijay Pratap Singh, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State.
8. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 400 of 2023, under Sections

452, 376, 504, 506 IPC, 3/4, 51/6 POCSO Act and 3(2)(V) SC/ST Act, Police Station Hapur Nagar, District Hapur during pendency of the trial.

9. FIR of the present case was lodged against applicant and according to the FIR on 21.05.2023 when applicant committing rape with the daughter of the informant, informant suddenly arrived at home and thereafter applicant after abusing and using caste related words managed to escape.

10. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim and applicant were having love affair and on the date of incident suddenly mother of the victim arrived and when she witnessed the applicant and her daughter then she lodged FIR of the present case.

11. He further submits that FIR of the present case was lodged after 12 days. He further submits that on the basis of false allegation applicant has been made accused in the present matter. He further submits that although in the statement recorded under Section 161 Cr.P.C. victim stated that when she was alone in the house then applicant arrived and against her wishes made physical relationship with her but when the statement under Section 164 Cr.P.C. was recorded then she admitted that she loved the applicant and when she was along with applicant then suddenly her mother arrived and she witnessed both of them and thereafter FIR of the present case was lodged.

12. He further submits that even as per school record, victim was more than 17 years but although as per ossification test, which was conducted after passing the order by this Court, the age of victim was found 15 years but as there can be variation of age of two years, therefore, the age of the victim may be 18 years and precisely it cannot be said that she was below 18 years. Further, applicant is also a young lad and he is although having criminal history of three cases but his criminal history has been explained in the supplementary affidavit and applicant in the present matter is in jail since 05.06.2023.

13. Per contra, learned AGA opposed the prayer for bail but could

not dispute the argument on facts advanced by learned counsel for the applicant.

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

15. Although, victim in her statement recorded under Sections 161 Cr.P.C. stated that against her wishes applicant made physical relationship with her but in the statement recorded under Section 164 Cr.P.C. she stated that applicant and victim both loved each other and on the date of incident when victim was along with applicant then her mother arrived and when victim stated to her mother to perform her marriage with the applicant then her mother refused for the same, therefore, from the statement of the victim it appears to be case of love affair.

16. Although, from the ossification test report, which was conducted after the order passed by this Court, it appears that victim was around 15 years of age but from her school record, her date of birth is 06.02.2006 and from the school record she was more than 17 years old, therefore, I find force in the argument advanced by learned counsel for the applicant that it cannot be said at this stage that victim is even below 18 years of age.

17. It appears to be a case of love affair and applicant is also a young lad aged about 22 years and law is settled that bail should not be rejected either for punitive purpose or preventive purpose.

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 - **Aadil** 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 :- 19.10.2023

AK Pandey