

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41095 of 2023

Applicant :- Rahul Yadav @ Rooplal

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

Counsel for Applicant :- Kuldeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Pradeep Kumar, learned AGA for the State apprised the Court that on 26.08.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Kuldeep Kumar, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 78 of 2021, under Sections 363, 366, 376(3) IPC & 3/4 POCSO Act & 3(2)5 SC/ST Act, Police Station- Sikandrabad, District- Bulandshahr, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and according to the FIR applicant was son-in-law of the tenant of the informant and he enticed away the daughter of the informant aged about 15 years.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim herself had gone alongwith the applicant and this fact is evident from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.
6. He further submitted that however, as per the school record, victim was 15 years' old at the time of incident but in fact she was major girl aged about more than 18 years and intentionally during investigation her ossification test was not conducted. He further submitted that even appearance wise she looked like major.
7. He further submitted that it is a case of love affair and applicant

is not having any criminal history and he is in jail since 26.02.2021 i.e. for almost three years.

8. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record, victim was hardly 15 years' old at the time of incident, therefore, her consent is immaterial but could not dispute the fact that during investigation, ossification test of the victim could not be conducted and applicant is in jail for last almost three years and he is not having any criminal history.

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

10. However, from the school record of the victim, it appears that at the time incident she was aged about 15 years but during investigation, her ossification test was not conducted.

11. Further, victim in her both the statements recorded during investigation stated that she herself had gone alongwith the applicant and in the statement recorded under Section 164 Cr.P.C. she categorically stated that with her consent physical relationship was developed between her and applicant and she does not want to proceed any further against the applicant, therefore, from the statement of the victim recorded under Section 164 Cr.P.C., it appears that it is a case of love affair.

12. The object of POCSO Act is to protect the child from sexual abuse and not to punish the victim as well as accused for their love affair, in my view, in cases like present one, by ignoring the statements of the victim, the bail application of an accused should not be dismissed.

13. Further, law is settled, bail application of an accused should not be dismissed either for punitive or for preventive purpose.

14. Further, applicant is not having any criminal history and he is in jail since 26.02.2021 i.e. for almost three 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- **Rahul Yadav @ Rooplal** 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 :- 13.12.2023

KK Patel