

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40064 of 2023

Applicant :- Vijay Kushwaha

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

Counsel for Applicant :- Amit Kumar Dixit

Counsel for Opposite Party :- G.A.,Dhiraj Singh

Hon'ble Sameer Jain,J.

1. Heard Sri Amit Kumar Dixit, learned counsel for the applicant, Sri Dhiraj Singh, learned counsel for the informant and Sri Imran Khan, learned AGA, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.311 of 2022, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Kotwali Dehat, District Banda during pendency of the trial.

3. FIR of the present case was lodged under Section 498 IPC against the applicant on 2.11.2022 through an application under Section 156(3) Cr.P.C. and according to the FIR, applicant on 30.9.2022 has enticed away the married daughter of the informant aged about 19 years.

4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and this fact is even evident from both the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

5. He further submits that in both the statements victim categorically stated that she had gone along with applicant according to her own wish and applicant neither committed rape with her nor he ever made physical relationship with her.

6. He further submits that in both the statements victim stated that against her wishes her marriage was performed by her father and, therefore, she left her paternal home.

7. He further submits that although as per FIR, the age of the victim is 19 years but on the basis of Class-VIII mark sheet Section 3/4 POCSO Act has been added and according to the mark sheet victim at the time of incident was around 17 years old. He next submits that during investigation ossification test of the victim was not conducted.

8. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 14.6.2023.

9. Per contra, learned AGA as well as learned counsel for the informant although opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

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

11. Considering the statements of the victim recorded under Sections 161 and 164 Cr.P.C., in my view, applicant is entitled to be released on bail.

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

13. Let the applicant-**Vijay Kushwaha** 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.

14. 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.

15. 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 :- 13.10.2023
SKM