

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46638 of 2022

Applicant :- Pankaj Yadav

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

Counsel for Applicant :- Hanuman Prasad Kushwaha, Ravindra Kumar Tripathi, Sandeep, Ved Prakash Ojha

Counsel for Opposite Party :- G.A., Rakesh Kumar Pandey, Shiv Babu Dubey

Hon'ble Sameer Jain, J.

1. Heard Sri Ved Prakash Ojha, learned counsel for the applicant, Sri Rakesh Kumar Pandey, learned counsel for the informant and Sri S. Bahadur Singh, learned A.G.A. for the State.
2. The instant bail application has been filed by the applicant with the prayer for release on bail in Case Crime No. 0076 of 2022 under sections 363, 366, 376 (3) IPC and section 3/4 POCSO Act, Police Station Bar, District Lalitpur during pendency of trial.
3. FIR of the present case was lodged against the applicant and according to the FIR, applicant has enticed away the sister of the informant aged about 16 years.
4. Learned counsel for the applicant submits that entire allegations made against the applicant are totally false and the victim had gone along with the applicant out of her own wish and this fact is evident from the statements of the victim recorded under sections 161 and 164 Cr.P.C.
5. He further submits that in both her statements, the victim has categorically stated that she has performed marriage with the applicant. He further submits that although from the school record and ossification test report of the victim, she was 16 years old at the time of the incident but appearance wise, she appeared to be of 18 years. It is further submitted that it is a case of love affair and applicant is not having any previous criminal history and is in jail since 09.06.2022 i.e. for more than a year.
6. *Per contra*, learned AGA as well as learned counsel for the informant though opposed the prayer for bail and submit that victim is 16 years old girl and her consent is immaterial but both the counsels could not dispute the fact that from the statements of the victim, it appears that it is a case of love affair and she out of her own wish had gone with the applicant and applicant is in jail for more than a year. However, learned AGA pointed out that applicant has criminal history of four cases but he fairly concedes that all the said four cases are of minor nature.

7. I have heard all the parties and perused the record of the case.

8. However, from the record, it transpires that victim is about 16 years old but she in her statement recorded under sections 161 and 164 Cr.P.C stated that she is in love with the applicant and has also performed marriage with him, therefore, it appears to be a case of love affair. Law is settled that bail application should not be dismissed either for preventive or punitive purposes. Further, applicant is in jail for more than a year.

9. Therefore, considering the facts and circumstances as discussed above, in my view, the applicant is entitled to be enlarged on bail.

10. Let the applicant **Pankaj Yadav** 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.

11. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicant.

12. 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 :- 16.10.2023

Madhurima