

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40350 of 2023

Applicant :- Rahul Maurya

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

Counsel for Applicant :- Ravish Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As per office report dated 7.10.2023, notice has been served to the informant. Dr. S.B. Maurya, learned AGA-I submitted that notice has been served to the informant by the police on 14.9.2023. Despite service of notice none appeared on behalf of the informant.

2. Heard Sri Ravish Kumar Singh, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 40 of 2023, under Sections 363, 366A, 376(3), 370, 506 IPC and section 5L/6 POCSO Act, Police Station Manduadeeh, District Varanasi, during pendency of the trial in the court below.

4. FIR of the present case was lodged against unknown person and according to the FIR daughter of the informant aged about 13 years had gone to college but did not return.

5. Learned counsel for the applicant submitted that nobody was named in the FIR but after recovery of the victim on the basis of her statement applicant was made accused in the present matter.

6. He further submitted that in the statement under section 161 Cr.P.C. victim categorically stated that she on her own had gone alongwith the applicant and did not state that either applicant made physical relationship with her or committed rape with her but subsequently when her statement under section 164 Cr.P.C. was recorded then under the pressure of her parents she started making allegation of abduction and rape against the applicant.

7. He further submitted that even her statement recorded under

section 164 Cr.P.C. does not appear to be convincing.

8. He further submitted that although applicant is having criminal history of seven cases but all the cases were of theft and during investigation applicant has been made accused in these cases and criminal history has been explained in the instant bail application.

9. He further submitted that applicant is in jail in the present matter since 23.3.2023.

10. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record age of the victim is around 13 years but he could not dispute the fact that as per ossification report her age was found around 16-17 years.

11. He further could not dispute the fact that although victim made allegation of rape and abduction against the applicant under section 164 Cr.P.C. but no such allegation was made by her in her statement recorded under section 161 Cr.P.C. and in the statement recorded under section 161 Cr.P.C. she did not even make any allegation of rape against the applicant.

12. However, learned AGA further pointed out that applicant is having criminal history of seven other cases.

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

14. Although, applicant is having criminal history of seven cases and victim in her statement recorded under section 164 Cr.P.C. made allegation of rape and abduction against him and victim also appears to be below 18 years old girl but victim in her statement recorded under section 161 Cr.P.C. stated that she according to her own wish had gone along with the applicant and did not make any allegation of either rape or abduction, therefore, it appears that there are material contradictions in her both the statements recorded under sections 161 and 164 Cr.P.C.

15. Further, criminal history of the applicant has been explained in the instant bail application and from its perusal it appears that applicant was made accused for offences under sections 379, 411 IPC.

16. The law is settled that if otherwise case of bail is made out then merely on the basis of criminal history bail application should not be rejected.

17. Further applicant is in jail since 23.3.2023 i.e. for more than six months.

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-**Rahul Maurya**, 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 :- 18.10.2023

Ankita