

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45855 of 2023

Applicant :- Suhail

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

Counsel for Applicant :- Pratik Chandra,Asha Parihar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Ghanshyam Mishra, learned Brief Holder for the State apprised the Court that notice has been served upon the informant on 13.09.2023. Despite service of notice, none present on behalf of the informant.
3. Heard Sri Rupendra Kumar Mishra, Advocate holding brief of Sri Pratik Chandra, learned counsel for the applicant and Sri Ghanshyam Mishra, learned Brief Holder for the State.
4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 26 of 2023, under Sections 363, 366, 376 IPC, Section 3/4 POCSO Act and Section 3(2)(V) SC/ST Act, Police Station Kotwali Konch, District Jalaun during pendency of the trial.
5. FIR of the present case was lodged against applicant and according to the FIR applicant enticed away the daughter of the informant aged about 16 years.
6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and daughter of the informant was major girl aged about 18 years and she herself had gone along with the applicant and after performing marriage, she started living with the applicant and this fact is evident from the statements of the victim recorded under Sections

161 Cr.P.C. and 164 Cr.P.C.

7. He further submits that during investigation ossification test of the victim was not conducted and even according to her school record, victim at the time of incident was about 17 years. He further submits that it is a case of love affair and applicant is not having any criminal history and in the present matter he is in jail since 25.07.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she herself had gone along with the applicant and also performed marriage with him. He further could not dispute the fact that even as per school record the age of the victim at the time of incident she was about 17 years old.

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

10. From the perusal of record, it appears that victim even as per school record was about 17 years old at the time of incident and during investigation her ossification test was not conducted. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not make any allegation against the applicant and stated that she herself had gone along with the applicant and had performed marriage with him.

11. The object behind POCSO Act is to protect the child from sexual abuse and not to punish an accused for love. In my view, by ignoring the statements of the girl (victim) recorded during investigation, the liberty of bail to the accused should not be refused.

12. Further, the law is settled that bail should not be dismissed either for punitive purpose or preventive purpose.

13. Further, applicant is not having any criminal history and in the present matter he is in jail since 25.07.2023.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

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

16. Let the applicant - **Suhail** 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.

17. 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.

18. 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 :- 22.11.2023

AK Pandey