

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41658 of 2023

Applicant :- Pradeep Sahani (Nishad)

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

Counsel for Applicant :- Dewendra Singh, Sarita Kumari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Imran Khan, learned AGA apprised the Court that on 30.9.2023, notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Dewendra Singh, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 166 of 2023, under Sections 376, 323, 504, 506 IPC and 3/4 POCSO Act, Police Station Ramgarhtal, District Gorakhpur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and according to the FIR, informant was 20 years old and applicant sexually exploited her under the false promise of marriage.
5. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and from the statement of the victim recorded under sections 161 and 164 Cr.P.C., it appears that she was major aged about 20 years but on the basis of school certificate during investigation, Investigating Officer determined her age about 16 years and 7 months but infact, she was major and from her both the statement, it appears that she was consenting party.
6. He further submitted that in the statement recorded under section 164 Cr.P.C. victim categorically stated that she loved the applicant and she is going to perform marriage with the applicant and now marriage of the applicant has been performed with the victim and this fact has specifically been averred by applicant in paragraph No. 14 of the affidavit and victim is now wife of the applicant.
7. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 3.4.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

10. Considering the statement of the victim recorded under section 164 Cr.P.C. coupled with the fact that applicant has already performed marriage with her and she is at present his wife, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant-**Pradeep Sahani (Nishad)** 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.

13. 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.

14. 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 :- 17.10.2023

Ankita