

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52509 of 2022

Applicant :- Rajan Vishwakarma

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

Counsel for Applicant :- Ganesh Mani,Ajeet Singh,Anil Kumar Yadav,Jai Prakash Singh,Kumar Ashutosh Srivastava,Nagendra Bahadur Singh,Raj Kiran Chaudhary,Shambhavi Nandan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent apprise the Court that on 10.11.2022, notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.
2. Heard Shri Nagendra Bahadur Singh, learned counsel for the applicant and Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.0192 of 2022, under Sections 363, 366, 376(3) IPC & Sections 3/4 POCSO Act, Police Station Cholapur, District Varanasi, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 14.06.2022 against unknown persons and according to the FIR, daughter of the informant aged about 13 years was enticed away by two unknown persons.
5. Learned counsel for the applicant submits that nobody was

named in the FIR but when victim was recovered and her statement under Section 161 Cr.P.C. was recorded then she disclosed the name of the applicant and thereafter applicant was made accused in the present matter.

6. He further submits that from the statement of victim recorded under Section 161 Cr.P.C., it appears that she was having friendship with the applicant and she herself had gone along with the applicant and started living with him in his house as his wife but subsequently when her statement under Section 164 Cr.P.C. was recorded then she changed her earlier version and stated that applicant abducted her and committed rape upon her.

7. He further submits that there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C., therefore, it cannot be said that victim is a reliable witness.

8. He further submits that however as per school record, at the time of incident, victim was 13 years old but in fact she is major aged about 18 years and intentionally during investigation, her ossification test was not conducted and even appearance wise she looked like a major girl.

9. He further submits that her parents disclosed wrong date of birth of the victim in her school record.

10. He further submits that applicant is also a teenage boy aged about 18-19 years and this fact is evident from the medical report of the applicant, which has been annexed at page 47 of the paper book and in fact victim and applicant both were having love affair and victim herself had gone along with the applicant and started living with him in his house as his wife and this fact is

evident from the statement of the victim recorded under Section 161 Cr.P.C.

11. He further submits that it is a case of teenage love and applicant is not having any criminal history and he is in jail in the present matter since 25.06.2022 i.e. for last almost one and a half years.

12. Per contra, learned AGA opposed the prayer for bail and submits that victim is hardly 13 years old and she in the statement recorded under Sections 164 Cr.P.C. categorically stated that applicant abducted her and committed rape upon her.

13. He further submits that even as per her statement recorded under Section 161 Cr.P.C., it appears that applicant was living with her as her husband and therefore, even if from the statement under Section 161 Cr.P.C. of the victim, her consent is reflecting then also considering the age of the of the victim, which is 13 years, it hardly matters.

14. He further submits that however with regard to the age of the applicant, there is no document on record but as per his instructions, the applicant at the time of incident was about 25 years old and therefore, he should not be released on bail.

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

16. From the record, it reflects that as per school record victim is aged about 13 years but during investigation her ossification test was not conducted.

17. Further, however, victim in her statement under Section 164

Cr.P.C. stated that applicant abducted her and forcibly committed rape upon her but in her statement under Section 161 Cr.P.C., she stated that she herself had gone alongwith with the applicant and according to her own wish she started living with him in his house as his wife and therefore, there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

18. Further, however, as per the instructions of learned A.G.A., applicant is an adult aged about 24-25 years but at the time of his medical examination, his age was disclosed as 19 years and therefore, at this stage precisely, it cannot be said that applicant is an adult aged about more than 24 years.

19. Further, applicant is not having any criminal history and he is in jail in the present matter since 25.06.2022 i.e. for last almost one and a half years.

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

21. Let the applicant- **Rajan Vishwakarma**, 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.

22. 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.

23. 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 :- 30.11.2023

Zafar