

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41661 of 2023

Applicant :- Shamsad Ansari

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

Counsel for Applicant :- Pradeep Yadav,Vandana Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. The instant matter also pertains to the provisions of POCSO Act.
2. Sri Imran Khan, learned AGA, for the State, apprised the Court that on 3.10.2023 notice has been served to the informant of the case.
3. Despite service of notice, none appeared on behalf of the informant.
4. Supplementary affidavit filed today on behalf of the applicant is taken on record.
5. Heard Sri Pradeep Yadav, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
6. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.414 of 2023, under Sections 363, 366, 376 and 506 IPC and Section 3/4 POCSO Act, Police Station Kotwali Deoria, District Deoria during pendency of the trial.
7. FIR of the present case was lodged against the applicant and according to the FIR, applicant enticed away the daughter of the informant aged about 17 years.

8. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and this fact is evident from the statement of the victim recorded under Section 161 Cr.P.C. in which she stated that she according to her own wish had gone along with applicant.

9. He further submits that in the statement under Section 161 Cr.P.C. victim did not make any allegation of either rape or sexual exploitation against the applicant.

10. He further submits that when the statement of the victim was recorded under Section 164 Cr.P.C. then she changed her earlier version and stated that applicant committed rape with her and this fact clearly suggests that subsequently on the instigation of her parents victim changed her earlier version and she is not reliable witness.

11. He further submits that although as per school record victim at the time of incident was around 17 years but according to her ossification test report she was around 18 years old and, therefore, at this stage it cannot be said that she was below 18 years old girl.

12. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 27.5.2023.

13. Per contra, learned AGA opposed the prayer for bail and submits that the victim in her statement under Section 164 Cr.P.C. stated that applicant committed rape with her and according to the school record she was around 17 years old but the learned AGA could not dispute the fact that that in her statement under

Section 161 Cr.P.C. victim did not make any allegation against the applicant and as per ossification test report, her age was around 18 years old

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

15. However, victim in her statement recorded under Section 164 Cr.P.C. stated that applicant prepared her obscene videos when she was taking bath and thereafter committed rape with her. But in her statement under Section 161 Cr.P.C. which was recorded earlier she categorically stated that she herself had gone along with applicant and in her statement under Section 161 Cr.P.C. she did not make any allegation of either obscene videos or rape against the applicant.

16. Further, however as per school record victim was around 17 years old at the time of incident but as per her ossification test report which was produced by learned AGA during the course of argument it reflects that she was about 18 years of age.

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

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

19. Let the applicant-**Shamsad Ansari** 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.

20. 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.

21. 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
SKM