

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41365 of 2023

Applicant :- Gopi Singh

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

Counsel for Applicant :- Kuldeep Kumar,Mohit Singh

Counsel for Opposite Party :- G.A.,Aarushi Khare

Hon'ble Sameer Jain,J.

1. As matter also pertains to the provisions of Section 376 (3) IPC, therefore, notices were issued to the informant of the case.
2. As per office report dated 6.11.2023 notice has already been served to the informant.
3. Even Sri Tanay Kumar, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 23.9.2023.
4. Despite service of notice, none appeared on behalf of the informant.
5. However, Sri Tanay Kumar, learned AGA, for the State and the learned counsel appearing for the High Court Legal Services Committee are present.
6. Heard Sri Kuldeep Kumar, learned counsel for the applicant, Sri Tanay Kumar, learned AGA, for the State and Ms. Shivangi Pathak, learned Advocate holding brief of Ms. Arushi,learned counsel appearing for the High Court Legal Services Committee.
7. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.53 of 2023, under Sections 363, 366, 504,506 and 376(3) IPC and Section 5/6 POCSO, Police Station Asothar, District Fatehpur

during pendency of the trial.

8. FIR of the present case was lodged against the applicant and one another and according to the FIR, the daughter of the informant had gone from her house to attend examination but did not return to home and subsequently informant came to know that applicant has enticed her away.

9. Learned counsel for the applicant submits that on the basis of false allegation applicant has been made accused in the present matter.

10. He further submits that when the statement of the victim was recorded under Section 161 Cr.P.C. then she stated that she herself had gone along with applicant upto Delhi and with her consent physical relationship were developed between both of them.

11. He further submits that when the statement of victim was recorded under Section 164 Cr.P.C. then she changed her earlier version and stated that applicant enticed her and against her wishes made physical relationship with her.

12. He further submits that victim in her statement recorded under Section 161 Cr.P.C. admitted that she loved applicant for the last one year.

13. He further submits that as per school record and the report of CMO concerned the victim was about 16 years old and, therefore, possibility cannot be ruled out at this stage that she might be even more than 18 years of age.

14. He further submits that even appearance wise victim looks like major girl. He next submits that it is a case of love affair.

15. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 14.4.2023.

16. Per contra, learned AGA as well as learned counsel for the High Court Legal Services Committee opposed the prayer for bail and submitted that from the record it reflects that victim was about 16 years old at the time of incident and therefore, even if her consent reflects from the record then also it hardly matters.

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

18. From the school record of the victim it appears that she was around 16 years old at the time of incident and even report of CMO concerned also disclosed her age as 16 years but victim in her statement recorded under Section 161 Cr.P.C. categorically stated that she herself had gone along with applicant and she also loved him and with her consent physical relationship were developed between both of them.

19. However, in her statement under Section 164 she twisted her earlier statement and stated that applicant enticed her away and made physical relationship against her wishes but even from her statement recorded under Section 164 Cr.P.C. it appears that she had gone along with applicant upto Delhi and she also admitted that she also loved the applicant and, therefore, I find force in the argument advanced by the learned counsel for the applicant that from the record it appears that victim was consenting party.

20. The object behind the POCSO Act was to protect a child from sexual abuse and not to punish accused for love affair.

21. In my view, by ignoring the statements of the victim recorded under Sections 161 or 164 Cr.P.C. bail should not be rejected.

22. Further, law is settled that bail application should not be dismissed either for punitive or preventive purposes.

23. Further, applicant is not having any previous criminal history and he appears to be a young lad aged about 21-22 years and in the present matter he is in jail since 14.4.2023, i.e., for the last more than six months.

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

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

26. Let the applicant-**Gopi Singh** 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.

27. 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.

28. 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 :- 7.11.2023

SKM