

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 41646 of 2023

**Applicant :-** Vikram Kumar

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

**Counsel for Applicant :-** Laxmi Shankar Yadav,Laloo Yadav

**Counsel for Opposite Party :-** G.A.,Mamta Singh

**Hon'ble Sameer Jain,J.**

1. Sri Santosh Nigam, learned AGA for the State apprised the Court that notice has been served upon the informant on 21.09.2023. Despite service of notice none present on behalf of the informant.
2. Heard Sri Laloo Yadav, learned counsel for the applicant and Sri Santosh Nigam, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 41 of 2023, under Sections 363, 366, 376 IPC and 5/6 POCSO Act, Police Station Badalapur, District Junpur during pendency of the trial.
4. Learned counsel for the applicant submitted that this is second bail application filed on behalf of the applicant. The first bail application of the applicant was dismissed by this Court vide order dated 27.06.2023 passed in Criminal Misc. Bail Application No. 21528 of 2023 and from perusal of the order passed on the first bail application of the applicant, it appears that it was dismissed mainly on the ground that although learned counsel for the applicant advanced argument that victim appears to be consenting party but no such defence was taken in the entire bail application.
5. He further submits that due to the mistake the defence could not be properly taken but now in paragraph-14 of the affidavit, applicant specifically stated that applicant and victim both loved each other and victim had gone along with applicant according to her own wish. He further submits that even from the statements of the victim recorded during investigation, it appears that she was consenting party.

6. He further submits that although as per school record victim appears to be 16 years 7 months old but in fact she was more than 18 years and intentionally her ossification test was not conducted. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 24.03.2023.

7. Per contra, learned AGA opposed the prayer for bail and submitted that this is second bail application filed on behalf of the applicant and all these facts have been considered by this Court at the time of dismissing the first bail application but could not dispute the fact that in paragraph-9 of the order dated 27.06.2023 passed on the first bail application, it is noted that applicant did not take the defence that applicant and victim both were having love affair.

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

9. However, this is second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on 27.06.2023 and from the order dated 27.06.2023 it appears that although learned counsel for the applicant argued that from the statements of the victim she appears to be consenting party but no such defence was taken in the first bail application but now in paragraph-14 applicant has taken a specific defence that applicant and victim were having love affair and in paragraph-15 it has also been specifically mentioned that applicant is 21 years old and even from the record it appears that ossification test of the victim was not conducted and even as per school record she was around 16 years 7 months old.

10. Further, from the statement of the victim recorded under Section 161 Cr.P.C. it appears that she was consenting party. Further, applicant is not having any criminal history and in the present matter he is in jail since 24.03.2023 i.e. for more than six months.

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

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

13. Let the applicant - **Vikram Kumar** 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.

14. 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.

15. 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 :- 31.10.2023**

AK Pandey