

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41525 of 2023

Applicant :- Ram Krishna

Opposite Party :- State Of U.P Through Sec,Home, Secretariat And 3 Others

Counsel for Applicant :- Narendra Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to the provisions of SC/ST Act, therefore, notices were issued to the informant of the case.
2. As per office report dated 26.10.2023 notice has been served personally to the informant of the case.
3. Sri Imran Khan, learned AGA, for the State, also apprised the Court that notice has been served to the informant of the case on 16.9.2023.
4. Despite service of notice none appeared on behalf of informant.
5. Heard Sri Narednra Kumar Singh, 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.341 of 2022, under Sections 363, 366 and 376 IPC, Section 3/4 POCSO Act and 3(2)(5) SC/ST Act, Police Station Kamalganj, District Farrukhabad during pendency of the trial.
7. FIR of the present case was lodged against the applicant and others on 2.11.2022 and according to the FIR, on 27.10.2022 in the morning when informant woke up then found that his daughter

aged about 15 years was not in the house. It is further mentioned in the FIR that from the home some jewellery and Rs.10,000/- were also missing. It is also mentioned in the FIR that it appears that applicant has enticed away his daughter and earlier also on 13.7.2022 he had enticed her.

8. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and from the statement of the victim recorded under Section 161 Cr.P.C. it appears that she herself had gone from her house upto Delhi and thereafter she herself arrived at the house of applicant and thereafter she also performed marriage with the applicant.

9. He further submits that under Section 161 Cr.P.C. victim categorically stated that no physical relationship was developed between her and applicant.

10. He further submits that when the statement of victim was recorded under Section 164 Cr.P.C. then she stated that she had gone along with applicant but in her statement under Section 164 Cr.P.C. also she did not state anything against the applicant and stated that she had performed marriage with applicant. He next submits that although in her statement under Section 164 Cr.P.C. she stated that physical relationship between both of them were made with her consent.

11. He further submits that although as per school record victim was around 15 years old at the time of incident but actually she is major aged about 18 years and even appearance wise she looks like major.

12. He next submits that intentionally during investigation

ossification test of the victim was not conducted.

13. He further submits that it is a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 22.11.2022, i.e., for almost a year.

14. Per contra, learned AGA opposed the prayer for bail and submits that victim is hardly 15 years old girl, therefore, his consent is immaterial but he could not dispute the fact that victim in her statement under Section 161 Cr.P.C. categorically stated that no physical relationship was developed between her and applicant.

15. Learned AGA further could not dispute the fact that during investigation ossification test of the victim could not be conducted and applicant is in jail since November, 2022.

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

17. Although from the school record of the victim it appears that at the time of incident she was around 15 years old but in her both the statements recorded under Sections 161 and 164 Cr.P.C. she did not make any allegation against the applicant. In her statement under Section 161 Cr.P.C. she stated that she herself had gone upto Delhi alone and thereafter she had gone at the house of applicant and also performed marriage with him and further stated that no physical relationship was developed between both of them but in her statement under Section 164 Cr.P.C. she stated that she had gone along with applicant from her house and thereafter both went to Bombay and performed marriage and physical relationship were also developed between both of them with her consent. Therefore, there are material contradictions in both her statements.

18. Further, applicant is not having any criminal history and is in jail for almost one year.

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

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

21. Let the applicant-**Ram Krishna** 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 :- 27.10.2023
SKM