

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41984 of 2023

Applicant :- Vishal @ Pintu

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

Counsel for Applicant :- Chakshuvendra Pachauri

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to the provisions of SC/ST Act, therefore, notice was issued to the informant of the case.
2. As per office report notice has been served to the informant.
3. Learned AGA, for the State, also apprised the Court that notice has been served to the informant of the case on 25.9.2023.
4. Despite service of notice, none appeared on behalf of the informant.
5. Heard Sri Chakshuvendra Pachauri, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, 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.228 of 2023, under Sections 457, 363, 376 and 506 IPC, Section 3/4 POCSO Act and 3(2)(V) SC/ST Act, Police Station Gajraula, District Pilibhit during pendency of the trial.
7. FIR of the present case was lodged against the applicant and according to the FIR, applicant committed rape with the daughter of the informant aged about 17 years.
8. Learned counsel for the applicant submits that entire allegation of rape made against the applicant is totally false and baseless and even story narrated by the victim in her both the statements

recorded under Sections 161 and 164 Cr.P.C. does not appear to be convincing.

9. He further submits that as per allegation applicant forcibly lifted the victim aged about 17 years from her house and taken her outside the house and then committed rape with her.

10. He further submits that applicant is hardly 20 years old boy and, therefore, it is hard to believe that against her wishes he could lift the victim and then could commit rape with her.

11. He further submits that actually victim and applicant both were having love affair and at the time of incident victim was alone in her house and applicant arrived at her home but in the meantime her parents arrived and thereafter FIR of the present case was lodged.

12. He further submits that victim in her both the statements recorded during investigation although stated against the applicant but she under the pressure of her parents stated against the applicant

13. He further submits that even as per school record at the time of incident victim was more than 17 years old and during investigation her ossification test was not conducted.

14. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 27.7.2023.

15. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim is below 18 years old girl and she in her both the statements recorded during investigation

stated that applicant committed rape with her but he could not dispute the fact that during investigation her ossification test could not be conducted and even as per school record victim was more than 17 years old at the time of incident.

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

17. Although it appears from the school record that victim was about 17 years old at the time of incident but during investigation her ossification test was not conducted.

18. Further, although victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant forcibly lifted her from her house and thereafter took her outside the house and committed rape with her.

19. Even as per prosecution, victim is around 17 years old and applicant is about 20 years of age, therefore, I find force in the argument advanced by the learned counsel for the applicant that is hard to believe that a young boy aged about 20 years forcibly took a grown up girl aged about 17 years against her wishes and committed rape.

20. Further, the defence taken by learned counsel for the applicant that victim and applicant were having love affair and only due to this reason he has been made accused in the present matter, cannot be ruled out at this stage.

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

22. Further, applicant is not having any previous criminal history

and he is in jail in the present matter since 27.7.2023.

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

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

25. Let the applicant-**Vishal @ Pintu** 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.

26. 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.

27. 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 :- 26.10.2023
SKM