

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42642 of 2023

Applicant :- Sujeet

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

Counsel for Applicant :- Swadesh Kumar Yadav, Anita Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. However, as per office report, service report of notice upon the informant is still awaited but Sri Tanay Kumar, learned AGA, for the State, submits that notice has been served to the informant of the case on 29.9.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. In view of the judgment of this Court in the case of **Ajeet Chaudhary Vs. State of U.P. and another** passed in Criminal Misc.Bail Application No. 45784 of 2020, if notice has been served to the informant/victim by the State then there is even no need to issue separate notice by the court to him/her, therefore, in view of the matter, the instant bail application is being heard. Supplementary affidavit filed today on behalf of the applicant is taken on record.
4. Heard Sri Swadesh Kumar Yadav, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in SCC No.967 of 2023 arising out of Case Crime No.42 of 2023, under Sections 363, 366A, 376(3) and 342 IPC and Section 3/4(2) POCSO Act, Police Station Sarh, District Kanpur Nagar during pendency of the

trial.

6. FIR of the present case was lodged against unknown persons and according to the FIR, some unknown boy has taken the daughter of the informant from her house in his absence.

7. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and when after about a month victim was recovered then she disclosed the name of applicant.

8. He further submits that although victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant abducted her and committed rape with her but the story narrated by her does not inspire confidence and it appears that she herself had gone along with applicant and after recovery under the pressure of her parents she started making allegation of rape against the applicant.

9. He further submits that as per school record and the report of the CMO concerned the age of the victim was around 15 years at the time of incident but appearance wise she looks like major girl.

10. He further submits that as according to ossification test of the victim, she was around 15 years, therefore, possibility cannot be ruled out that she may be even more than 17 years.

11. He further submits that the parents of the victim disclosed her wrong date of birth in her school record.

12. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 30.3.2023, i.e., for the last more than six months.

13. Per contra, learned AGA opposed the prayer for bail and submits that applicant is about 23 years old man and victim is

hardly 15 years old and as per her statement recorded during investigation, applicant committed rape with her and, therefore he should not be released on bail.

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

15. From the record it reflects that victim was about 15 years old and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 and 164 Cr.P.C.

16. Further, from the record it reflects that applicant is fully grown up and adult man aged about 23 years, therefore, I am not inclined to release the applicant on bail at this stage.

17. Accordingly, the instant bail application is **rejected** at this stage.

18. 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