

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42694 of 2023

Applicant :- Dharmendra Kushwah

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

Counsel for Applicant :- Prem Chandra Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Jhamman Ram, learned AGA-I submitted that the notice has been served to informant on 28.9.2023. Despite service of notice none appeared on behalf of the informant.
2. Heard Sri Prem Chandra Dwivedi, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 137 of 2023, under Sections 376, 354Ka, 354Kha, 458 and 506 IPC and 3/4 POCSO Act, Police Station Tajganj, District Agra, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and according to the FIR on 20.2.2023 in the night applicant after entering in the house of the informant committed rape with his sister aged about 14 years and after seeing the informant, he tried to escape but with the help of the villagers, informant caught him but subsequently, he managed to escape.
5. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and admittedly, applicant and victim both were having love affair and when applicant was alongwith the victim then in the meantime informant arrived and he witnessed the victim alongwith the applicant and therefore, he lodged the FIR of the present case.
6. He further submitted that although victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but under the pressure of informant she stated against the applicant.

7. He further submitted that although as per the school record victim was around 14 years old but according to the age certificate issued by the CMO concerned she was around 16 years old and therefore, it cannot be said that victim was below 18 years old.

8. He further submitted that applicant is having no criminal history and he is in jail in the present case since 21.2.2023.

9. Per contra, learned AGA opposed the prayer for bail and submitted that although as per ossification test victim was around 16 years old but according the school record, she was around 14 years and victim in her both the statements recorded under sections 161 and 164 Cr.P.C. categorically stated that applicant committed rape with her and therefore, no inference can be drawn at this stage that under the pressure of her parents or informant she stated against the applicant and therefore, applicant should not be released on bail.

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

11. From the perusal of the record it reflects that victim appears to be below 18 years old girl and she made allegation of rape in her both the statements recorded under sections 161 and 164 Cr.P.C. against the applicant although applicant has taken a plea that applicant and victim were having love affair and under the pressure of the parents victim stated against the applicant but I find force in the argument advanced by learned learned AGA that at this stage, merely on the basis of defence taken by the applicant, the statement of the victim recorded under sections 161 and 164 Cr.P.C. cannot be disbelieved.

12. Therefore, considering the facts and circumstances of the case, discussed above, in my view applicant is not entitled to be released on bail.

13. Accordingly, the instant bail application stands ***rejected***.

14. 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 :- 18.10.2023

Ankita