

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43028 of 2023

Applicant :- Vinod

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

Counsel for Applicant :- Virpratap Singh,Rajat Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA for the State apprised the Court that on 28.09.2023 notice has been served to the father of the informant of the case. Despite service of notice, none appeared either on behalf of the informant or his father.
2. Heard Sri Vir Pratap Singh, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 86 of 2023, under Sections 376, 506 IPC & 04 POCSO Act, Police Station- Chikasi, District-Hamirpur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and according to the FIR, on 26.05.2023 at about 11:50 hours when informant was in jungle, applicant committed rape with her.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and story narrated by the victim in the FIR as well as in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. appears to be improbable and no reliance can be placed on such version.
6. He further submitted that actually some dispute with regard to encroachment is pending between informant side and applicant side and in the year 2021 cousin brother of the applicant namely Gajraj Singh moved an application against Ram Singh, the uncle of the victim for removal of the construction, which he was raised in the field and complaint made by the cousin brother of the applicant has been annexed as Annexure No. 12 to the affidavit.

7. He further submitted that the FIR of the present case was lodged by the victim on the instigation of her uncle and this fact is even evident from the G.D. entry of the case, which has been annexed alongwith the supplementary affidavit, which shows that when victim arrived at police station then her uncle Ram Singh also accompanied her.

8. He further submitted that in the FIR and in the statement recorded under Section 161 Cr.P.C. victim disclosed her age as 18 years but in the statement recorded under Section 164 Cr.P.C. she started disclosing her age as 17 years and during investigation, on the basis of school certificate of Class-I of the victim, her date of birth was found as 12.07.2006 but as victim in her application, which has been annexed as Annexure No. 7 to the affidavit, stated that she is not literate and in the application she also put her thumb impression, therefore, it appears that the certificate procured by the Investigating Officer during investigation is not of the victim and no reliance can be placed on such certificate.

9. He further submitted that applicant is not having any criminal history and he is in jail since 03.06.2023.

10. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. Although, in the FIR as well as in both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. victim made allegation of rape against the applicant but story narrated by her does not appear to be convincing and it also reflects from the record that some dispute is pending between both the sides with regard to some construction raised by the uncle of the victim and at the time of lodging of the FIR, uncle of the victim also accompanied her upto the police station.

13. Further, even as per initial version of the victim, her age was about 18 years and according to her, she is not literate one but during investigation, Investigating Officer procured a school certificate of the victim and according to the school certificate, age of the victim is 17 years but as victim herself in the application, moved to the police, stated that she is not literate, therefore, I find force in the argument advanced by learned counsel for the applicant that no reliance can be placed at this stage on such

school certificate procured by the Investigating Officer.

14. Further, applicant is not having any criminal history and he is in jail since 03.06.2023.

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

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

17. Let the applicant- **Vinod** 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.

18. 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.

19. 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

KK Patel