

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42637 of 2023

Applicant :- Akash

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

Counsel for Applicant :- Vivek Kumar

Counsel for Opposite Party :- G.A.,Ken Singh

Hon'ble Sameer Jain,J.

1. Heard Sri Vivek Kumar, learned counsel for the applicant; Sri K. N. Singh, learned counsel for the informant and Sri Jhamman Ram, learned AGA-I for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 188 of 2023, under Sections 363, 366, 376 (3) IPC and section 4(2) POCSO Act, Police Station Malpura, District Agra, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicant and two others and according to the FIR, daughter of the informant aged about 13 years has been enticed away by the applicant with the help of co-accused persons.
4. It is further mentioned in the FIR that victim has also taken Rs. 2,000/- and some jewelries.
5. Learned counsel for the applicant submitted that although victim is around 13 years old and she made allegation of rape against the applicant under sections 161 and 164 Cr.P.C but on the instigation of her parents, she made allegation of rape against the applicant.
6. He further submitted that actually victim and applicant were good friends and victim had gone alongwith the applicant but applicant never committed rape with her but subsequently when she returned then under the pressure of her parents, she started making allegation of rape against the applicant.
7. He further submitted that at the time of her medical examination, victim categorically stated before the doctor that applicant did not commit rape with her.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 30.6.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is hardly 13 years old girl and she categorically stated in her both the statements recorded under sections 161 and 164 Cr.P.C. that applicant committed rape with her and applicant could not bring any reason for his false implication, therefore, he should not be released on bail.

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

11. Although, it appears that at the time of her medical examination, victim before the Doctor stated that applicant did not commit rape with her but in her both the statements recorded under sections 161 and 164 Cr.P.C. she stated that applicant committed rape with her.

12. Further, victim is hardly 13 years old girl and applicant could not bring any reason for his false implication, therefore, at this stage, statements of the victim recorded under sections 161 and 164 Cr.P.C. cannot be discarded merely on the endorsement made by the doctor.

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

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

15. 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 :- 17.10.2023

Ankita