

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43078 of 2023

Applicant :- Sachin Pal @ Kallu

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

Counsel for Applicant :- Vijay Singh Sengar

Counsel for Opposite Party :- G.A.,Gunjan Sharma

Hon'ble Sameer Jain,J.

1. As matter also pertains to the provisions of Section 376 (3) IPC, therefore, notices were issued to the informant of the case on 11.10.2023.
2. As per office report dated 31.10.2023, service report is still awaited.
3. However, Sri Tanay Kumar, learned AGA, for the State, apprised the Court that notice has been served to the informant by the State on 30.9.2023.
4. 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 no need to issue separate notice by the Court to him/her.
5. As according to the State notice has already been served to the informant and despite service of notice, none appeared on his behalf, therefore, the instant bail application is being heard.
6. None appeared on behalf of the High Court Legal Services Committee. However, learned AGA, for the State, is present.
7. Heard Sri Vijay Singh Sengar, learned counsel for the applicant and Sri Tanay Kumar, learned AGA, for the State.

8. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.64 of 2022, under Sections 363, 366 and 376(3) IPC and Section 3/4(2) POCSO Act, Police Station Kotwali Jalaun, District Jalaun during pendency of the trial.

9. FIR of the present case was lodged against the applicant and co-accused Vishnu @ Vishal and according to the FIR, applicant and co-accused enticed away the daughter of the informant aged about 15 years.

10. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually daughter of the informant is a major girl aged about 19 years and she herself had gone along with applicant and both have performed marriage and this fact is evident from her both the statements recorded under Sections 161 and 164 Cr.P.C.

11. He further submits that however, as per school record of Class-VII of the victim, her age at the time of incident was around 13 years and 8 months but she in her both the statements recorded during investigation categorically stated that her date of birth is 20.4.2003 and, therefore, she was more than 18 years at the time of incident.

12. He further submits that even as per CMO concerned the radiological age of the victim was about 17 years and, therefore, possibility cannot be ruled out that she was more than 18 years old.

13. He further submits that it is a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 9.10.2022, i.e., for more than a year.

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

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

16. However, from the school record of Class-VII of the victim, it appears that at the time of incident she was around 13 years and 8 months old but according to the report of CMO concerned, her radiological age was around 17 years and victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that her date of birth is 20.4.2003 and thus according to her she was about more than 19 years old at the time of incident.

17. Therefore, it appears to be a dispute with regard to correct age of the victim which can only be decided by the Special Court during trial under Section 34 POCSO Act.

18. Further, victim in her both the statements recorded during investigation categorically stated that she on her own had gone along with applicant and had also performed marriage with him and therefore, it appears to be a case of consensual relationship.

19. The object behind the POCSO Act is to protect a child from sexual abuse and not to punish for the consensual relationship.

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

21. Further, applicant is not having any previous criminal history and in the present matter he is in jail since October, 2022, i.e., for more than a year

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

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

24. Let the applicant-**Sachin Pal @ Kallu** 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.

25. 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.

26. 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 :- 1.11.2023
SKM