

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43892 of 2023

Applicant :- Vishal Vishwakarma@ Kallu Rider

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

Counsel for Applicant :- Ashok Kumar Singh, Preeti Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. As matter pertains to the provisions of Section 376 (3) IPC, therefore, notices were issued to the informant and as per office report, service report is still awaited but Sri Jhamman Ram, learned AGA-I apprised the Court that notice has been served to the informant on 27.9.2023. Despite service of notice none appeared on behalf of the informant.

2. The co-ordinate Bench of this Court in the case of ***Ajeet Chaudhary Vs. State of U.P. and another passed in Crl. Misc. Bail Application No. 45784 of 2020*** observed that if notice has been served to the informant through State then there is no need to even issue separate notice to him/his by the Court.

3. Therefore, in view of the observation made by co-ordinate Bench of this Court in the case of ***Ajeet Chaudhary (supra)***, the instant bail application is being heard.

4. Heard Sri Ashok Kumar Singh, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I for the State-respondent.

5. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 298 of 2023, under Sections 363, 366, 376(3) IPC & 3/4 POCSO Act, Police Station Shivpur, District Varanasi, during pendency of the trial in the court below.

6. FIR of the present case was lodged against the applicant and according to the FIR, applicant enticed away the daughter of the informant aged about 16 years.

7. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and actually victim is major girl aged about 18 years and she herself had gone alongwith the applicant and this fact is evident from her statement

recorded under section 161 Cr.P.C.

8. He further submitted that however, victim in her statement recorded under section 164 Cr.P.C. stated that applicant committed rape with her but in this statement also she stated that she liked the applicant and it appears that subsequently under the pressure of her parents she made allegation of rape against the applicant in her statement recorded under section 164 Cr.P.C.

9. He further submitted that victim is an illiterate girl and according to the doctor her radiological age was 13-15 years and therefore, precisely, at this stage, it cannot be said that victim was minor.

10. He further submitted that even considering the ossification test report of the victim, she may be more than 17 years of age.

11. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 1.7.2023.

12. Per contra, learned AGA opposed the prayer for bail and submitted that as per ossification test report of the victim her radiological age was 13-15 years and she in her statement recorded under section 164 Cr.P.C. made allegation of rape against the applicant but could not dispute the fact that victim is an illiterate girl and in her statement recorded under section 161 Cr.P.C. she stated that she herself had gone alongwith the applicant.

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

14. However, victim as per the age certificate issued by CMO concerned appears to be about 13-15 years old and she in her statement recorded under section 164 Cr.P.C. stated that applicant committed rape with her but she is an illiterate girl and therefore, there is no educational document of the victim on record to ascertain her age.

15. Further, victim in her statement recorded under section 161 Cr.P.C. categorically stated that she herself had gone alongwith the applicant and she disclosed her age 16 years and even according to the informant victim was around 16 years old, therefore, at this stage precisely it cannot be said that victim was below 18 years of age and there are material contradictions in both the statements of the victim recorded during investigation and even from the statement recorded under section 164 Cr.P.C. it appears that she

liked the applicant.

16. Further, applicant is having no criminal history and he is in jail in the present matter since 1.7.2023.

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

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

19. Let the applicant-**Vishal Vishwakarma@ Kallu Rider**, 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.

20. 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.

21. 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 :- 6.11.2023

Ankita