

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42999 of 2023

Applicant :- Jaidev

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

Counsel for Applicant :- Pankaj Satsangi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Pankaj Satsangi, learned counsel for the applicant and Sri Jitendra Kumar Pandey, learned State Law Officer for the State and perused the record.
3. Sri Jitendra Kumar Pandey, State Law Officer has stated that notice has been served on the informant on 28.09.2023.
4. Applicant seeks bail in Case Crime No. 311 of 2023, under Sections 363,366A, 370 of I.P.C., and 16/17 POCSO Act, Police Station- Sahaswan, District- Budaun, during the pendency of trial.
5. As per prosecution story, the informant instituted the FIR against Brij Mohan Yadav and Pappu alleging that they had enticed away his minor daughter on 25.05.2023 at about 09:00 AM.
6. Learned counsel for the applicant has stated that the said FIR is delayed by about 07 days and there is no explanation of the said delay caused. The applicant is not named in the FIR. His name has come up in the statement of victim recorded under Section 164 Cr.P.C. whereby she has stated that applicant along with one Rajesh forcibly got her married to another person Sitaram, after taking Rs. 2 lacs. He has also stated that she was not subjected to any kind of cruelty by any person. It is also alleged that the said Sitaram and Jaidev had taken her forcibly to Himachal Pradesh. He further stated that the victim is major as per the Ossification Test Report. As per the Ossification Test Report as the age of victim was 18 years and she looks much older by her physical appearance. Learned counsel for the applicant has further stated that as per ossification test report, her age is 18 years and a leverage of two years may be granted to the applicant on the upper

side.

7. Learned counsel has placed much reliance upon the judgement of Apex Court passed in *Jaya Mala Vs. State of J & K*, (1982) 2 SCC 538 and *Mohd. Imran Khan vs. State (Govt. of NCT of Delhi)*, (2011) 10 SCC 192, whereby it has been opined that the radiologist cannot be predict the correct date of birth rather there is a long margin of 1 to 2 years on either side. The applicant has no criminal antecedents. The applicant has no criminal antecedents.

8. Per contra, learned A.G.A. and learned counsel for the informant have has vehemently opposed the bail application but unable to dispute the submissions raised by the learned counsel for the applicant.

9. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and considering the complicity of accused, severity of punishment, at this stage, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

10. Let the applicant- **Jaidev** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/ intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.
- iv. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
- v. The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

11. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

12. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

13. It is made clear that observations made in granting bail to the

applicant shall not in any way affect the learned trial Judge in forming his independent opinion on the testimony of the witnesses.

Order Date :- 28.10.2023

Mohini

(Krishan Pahal, J.)