

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42995 of 2023

Applicant :- Tarandeep

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

Counsel for Applicant :- Suresh Dhar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA apprised the Court that on 29.9.2023 notice has been served to the informant. Despite service of notice none appeared on behalf of the informant.

2. Heard Sri Suresh Dhar Dwivedi, 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. 468 of 2023, under Sections 363, 376, 506 IPC and section 3/4 POCSO Act, Police Station Sadar Bazar, District Shahjahanpur, during pendency of the trial in the court below.

4. FIR of the present case was lodged against one Atul Kumar and according to the FIR nominated accused Atul Kumar enticed away the daughter of the informant aged about 15 years.

5. Learned counsel for the applicant submitted that applicant was not named in the FIR and during investigation when the statement of the victim was recorded under section 161 Cr.P.C. then he was made accused.

6. He further submitted that although from the statement of the victim recorded under sections 161 and 164 Cr.P.C. it reflects that there is allegation of rape against the applicant but it also reflects from her both the statements that she according to her own wish had gone alongwith the applicant on his motorcycle and this fact also finds support from the CCTV footage which was procured by the Investigating Officer during investigation.

7. He further submitted that actually victim and applicant both studied in same coaching centre and both were of the same age

group and age of the victim is around 18 years and applicant is also about 18 years old and both developed friendship and although victim had gone alongwith the applicant but applicant never committed rape with her and when the informant came to know the fact that victim had gone alongwith the applicant on his motorcycle then he lodged FIR of the present case and thereafter under his pressure during investigation victim also started making allegation of rape against the applicant.

8. He further submitted that although as per school record victim appears to be about 15 years old but as per ossification report she was around 16 years of age and therefore, precisely at this stage, it cannot be said that victim was below 18 years old.

9. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 12.7.2023.

10. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record and even as per ossification test report of the victim she appears to be below 18 years and however, it appears from the record that victim according to her own wish herself had gone alongwith the applicant on his motorcycle but if due to friendship victim had gone alongwith the applicant then applicant was not having any right to commit rape with her.

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

12. Although, from the perusal of the record, it reflects that victim was below 18 years old girl but applicant is also aged about 18 years and both appears to be of same age group and from perusal of the statements of the victim recorded under sections 161 and 164 Cr.P.C., it appears that victim had gone with the applicant on his motorcycle, therefore, defence taken by the applicant, at this stage, cannot be completely ruled out.

13. Law is settled that bail application should not be refused either for punitive or preventive purposes and provision of POCSO Act cannot be used for the purpose to restrain or curb the love relationship.

14. Further, applicant is having no criminal history and he is in jail in the present matter since 12.7.2023.

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-**Tarandeep**, 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

Ankita