

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43155 of 2023

Applicant :- Aman Kumar Gupta

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

Counsel for Applicant :- Kuldeep Singh Chahar, Atul Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Imran Khan, learned AGA, for the State, submits that notice has been served to the informant of the case on 18.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Atul Kumar, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.114 of 2022, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Chandauli, District Chandauli during pendency of the trial.
5. FIR of the present case was lodged against unknown persons and according to the FIR, the daughter of the informant aged about 17 years had gone to market from her house but did not return.
6. Learned counsel for the applicant submits that daughter of the informant, i.e., victim of the case was recovered after more than a year and after her recovery when her statement was recorded under Section 161 Cr.P.C. then the name of applicant was surfaced in the present matter.

7. He further submits that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that she on her own had gone along with applicant to Andhra Pradesh and thereafter she performed marriage with him.

8. He further submits that although as per school record at the time of incident victim was about 16-1/2 years old but during investigation her ossification test was not conducted and she appearance wise looks like major girl.

9. He further submits that applicant was also hardly 20 years old at the time of incident and it is a case of love affair.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 7.7.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that from the school record it appears that at the time of incident victim was 16-1/2 years old and, therefore, her consent is immaterial but he could not dispute the fact that victim in her both the statements recorded during investigation did not state anything against the applicant and during investigation ossification test of the victim was not conducted.

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

13. However, from the school record of the victim it appears that at the time of incident she was 16-1/2 years old but during investigation her ossification test was not conducted.

14. Further, victim in her both the statements recorded during investigation categorically stated that she herself had gone along

with applicant and also performed marriage with him, therefore, it appears to be a case of love affair.

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

16. Further, in view of this Court by ignoring the the statements of the victim recorded during investigation it would not be proper to refuse to enlarge the applicant on bail.

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

18. Further, applicant is not having any previous criminal history and in the present matter he is in jail since July, 2023.

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

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

21. Let the applicant-**Aman Kumar Gupta** 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.

22. 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.

23. 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 :- 3.11.2023
SKM