

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42958 of 2023

Applicant :- Ashish Kumar

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

Counsel for Applicant :- Satyam Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Rajeev Dhar Diwvedi, learned AGA, for the State, apprised the Court that notice has already been served to the informant of the case on 4.10.2023.

2. Despite service of notice, none appeared on behalf of the informant.

3. Heard Sri Satyam Pandey, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, 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.201 of 2023, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Sachendi, District Kanpur Nagar during pendency of the trial.

5. FIR of the present case was lodged against unknown persons and according to the FIR, on 21.6.2023 the daughter of the informant aged about 16 years had gone somewhere from her home. It is further mentioned in the FIR that a year before also she had gone somewhere from her house.

6. Learned counsel for the applicant submits that when victim was recovered then she disclosed the name of applicant in her statement under Section 161 Cr.P.C. and in the statement under

Section 161 Cr.P.C. she did not state that applicant either enticed her or committed rape with her but in her statement recorded under Section 164 Cr.P.C. she changed her version and stated that applicant under the pretext to perform marriage with her has taken her and committed rape with her.

7. He further submits that this fact clearly suggests that under the pressure of her parents she subsequently started making allegation against the applicant and no reliance can be placed on her statement under Section 164 Cr.P.C.

8. He further submits that although victim according to the school record is around 16 years old but during investigation her ossification test could not be conducted.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 14.7.2023.

10. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim was around 16 years old and she in her statement under Section 164 Cr.P.C. stated that applicant enticed her and committed rape with her but he could not dispute the fact that in her statement under Section 161 Cr.P.C. she neither made any allegation of enticement nor rape against the applicant.

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

12. However, from the school record it appears that victim was around 16 years old at the time of incident and she in her statement under Section 164 Cr.P.C. made allegation of rape and

enticement against the applicant but earlier when her statement was recorded under Section 161 Cr.P.C. then she did not state, either applicant enticed her or committed rape with her and, therefore, there are material contradictions in both the statements of the victim.

13. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 14.7.2023.

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

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

16. Let the applicant-**Ashish Kumar** 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.

17. 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.

18. 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 :- 26.10.2023

SKM