

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43084 of 2023

Applicant :- Umar Khan

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

Counsel for Applicant :- Rizwan Ullah Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to the provisions of Section 376 (3) IPC, therefore, notices were issued to the informant of the case.
2. As per office report dated 31.10.2023, service report is still awaited.
3. However, Sri Tanay Kumar, learned AGA, for the State, apprised the Court that notice has been served to the informant by the State on 5.10.2023.
4. In view of the judgment of this Court in the case of **Ajeet Chaudhary Vs. State of U.P. and another** passed in Criminal Misc. Bail Application No.45784 of 2020, if notice has been served to the informant/victim by the State then there is no need to issue separate notice by the Court to him/her.
5. As according to the State notice has already been served to the informant and despite service of notice, none appeared on his behalf, therefore, the instant bail application is being heard.
6. Heard Sri Rizwan Ullah Siddiqui, learned counsel for the applicant and Sri Tanay Kumar, learned AGA, for the State.
7. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.272 of 2023, under Sections 363, 366, 376(3) and 506 IPC and Section 3/4(2) POCSO Act, Police Station Kandhla, Jalaun,

District Shamli during pendency of the trial.

8. 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 15 years.

9. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually daughter of the informant is a major girl aged about 18 years as appearance wise she appears to be major.

10. He further submits that correct date of birth of the victim has not been mentioned by her parents in her school record.

11. He further submits that although from the statement of the victim recorded under Section 161 Cr.P.C. it appears that she was consenting party but when her statement under Section 164 Cr.P.C. was recorded then she stated that applicant enticed her away and made physical relationship against her wishes but as her statement under Section 164 Cr.P.C. was recorded subsequent to her statement recorded under Section 161 Cr.P.C., therefore, it appears that subsequently under the pressure of her parents she changed earlier version and started making allegation of rape against the applicant.

12. He further submits that applicant is also a young man aged about 22 years old and he was absolutely unaware that victim till date could not attend adulthood.

13. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 18.7.2023.

14. Per contra, learned AGA opposed the prayer for bail and submits that as per school record, victim appears to be 15 years old at the time of incident but he could not dispute the fact that during investigation her ossification test was not conducted.

15. However, he further pointed out that victim in her statement recorded under Section 164 Cr.P.C. stated that applicant enticed her and forcibly made physical relationship with her but again he failed to dispute the fact that victim in her statement recorded under Section 161 Cr.P.C. stated that she on her own had gone along with applicant and with her consent physical relationship were developed between her and applicant.

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

17. However, it appears from the school record of the victim that at the time of incident she was around 15 years old but during investigation her ossification test was not conducted and I find force in the argument advanced by the learned counsel for the applicant that in Indian Society there is tendency to disclose even less age than the actual age of the child.

18. However, victim in her statement under Section 164 Cr.P.C. stated against the applicant that he enticed her and made physical relationship against her wishes but in her statement recorded under Section 161 Cr.P.C. she stated that she on her own had gone along with applicant and with her consent physical relationship was developed, therefore, there are material contradictions in both the statements.

19. Further, the object behind the POCSO Act is to protect a child from sexual abuse and not to punish the consensual relationship

which is evident from the statement of the victim recorded under Section 161 Cr.P.C.

20. Further, there are material contradiction since both the statement of the victim recorded under Section 161 and 164 Cr.P.C. and applicant is a young man aged about 22 years and he is not having any previous criminal history and he is in jail in the presence mater since 18.7.2023.

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

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

23. Let the applicant-**Umar Khan** 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.

24. 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.

25. 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 :- 1.11.2023

SKM