

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43133 of 2023

Applicant :- Faisal Bakhsh @ Nitin @ Gauri

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

Counsel for Applicant :- Mohd. Ashraf Abbasi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Ms. Aarushi Khare, learned counsel has filed her power on behalf of the High Court Legal Services Committee, which is taken on record.
2. Dr. S.B.Maurya, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 25.10.2023.
3. Despite service of notice, none appeared on behalf of the informant.
4. Heard Sri Mohd. Ashraf Abbasi, learned counsel for the applicant, Dr.S.B.Maurya, learned AGA-I, for the State and Ms. Aarushi Khare, learned counsel for the High Court Legal Services Committee.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.160 of 2023, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Rawatpur, District Kanpur Nagar during pendency of the trial.
6. 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 17 years.

7. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually victim is major girl aged about more than 18 years and applicant and victim both loved each other and this fact is evident from the photographs of applicant and victim which has been annexed as Annexure-8 to the affidavit filed in support of the present bail application.

8. He further submits that victim in fact had gone herself along with applicant but after recovery under the pressure of her parents she started making allegation of rape against the applicant.

9. He further submits that even there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and her both the statements appear to be improbable and no reliance can be placed on such version.

10. He further submits that as per prosecution itself victim was around 17 years old and except the verbal age of victim, no other material for her age is available on record.

11. He further submits that even during investigation ossification test of the victim was not conducted.

12. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 6.6.2023.

13. Per contra, learned AGA as well as learned counsel for the High Court Legal Services Committee opposed the prayer for bail and submitted that in both the statements recorded under Sections

161 and 164 Cr.P.C. victim made allegation of rape against the applicant and even according to her, she was about 17 years old, therefore, considering the facts and circumstances of the case, applicant should not be released on bail.

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

15. However, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but there are material contradictions in both the statements of the victim and I find force in the argument advanced by the learned counsel for the applicant that her statement does not inspire confidence.

16. Further, from Annexure-8 to the affidavit filed in support of the present bail application which are the photographs of the victim and applicant, it appears that both were having love affair and, therefore, possibility at this stage cannot be ruled out that after recovery under the pressure of her parents victim started making allegation of rape against the applicant especially considering the fact that applicant belongs to Muslim community.

17. Further, even as per the prosecution victim was about 17 years old and with regard to her age, there is no document on record including her educational record or her ossification test report and, therefore, precisely at this stage it cannot be said that she was even below 18 years of age.

18. Law is settled that bail application should not be dismissed either for punitive or preventive purposes.

19. Further, applicant is not having any previous criminal history

and in the present matter he is in jail since 6.6.2023.

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

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

22. Let the applicant-**Faisal Bakhsh @ Nitin @ Gauri** 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.

23. 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.

24. 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 :- 8.11.2023
SKM

