

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 43921 of 2023

**Applicant :-** Ramu

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

**Counsel for Applicant :-** Sanjay Kumar Dubey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Sri Jhamman Ram, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 11.10.2023.

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

3. From the record it reflects that technically this is second bail application and first bail application of applicant was dismissed by this Court for want of prosecution and it was not decided on merits.

4. After the order of Hon'ble the Chief Justice dated 2.11.2023 the case is listed today before this Bench as this Bench is dealing with the matter relates to Section 376 IPC.

5. Heard Sri Sanjay Kumar Dubey, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, for the State.

6. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.403 of 2021, under Sections 363, 366, 376 and 506 IPC and Section 3/4 POCSO Act, Police Station Iglas, District Aligarh during pendency of the trial.

7. FIR of the present case was lodged against the applicant under

Sections 363 and 366 IPC and according to the FIR, applicant enticed away the daughter of the informant aged about 15 years.

8. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually applicant and victim both loved each other and victim herself had gone along with applicant and she stayed along with applicant for 11 days but after recovery under the pressure of her parents she started making allegation of rape against the applicant.

9. He further submits that however, as per school record victim at the time of incident was about 16 years 10 months old and her radiological age was about 15 years but in fact she is major aged about 18 years.

10. He further submits that even appearance wise victim looks like major girl.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 26.7.2021, i.e., for the last more than two years.

12. Per contra, learned AGA opposed the prayer for bail and submits that applicant is an adult and on the other hand victim was below 18 years old girl aged about 16 years and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and, therefore, applicant should not be released on bail.

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

14. However, from the record it reflects that victim of the case was

aged about 16 years and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but from her statement under Section 164 Cr.P.C. it appears that she was having friendship with the applicant and she used to talk with him and he also accompanied him upto Ghazipur from District Aligarh and in between she did not raise any alarm and, therefore, defence taken by applicant cannot be completely brushed aside at this stage.

15. Further, applicant in the present matter is in jail since 26.7.2021, i.e., for the last more than two years.

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

17. Therefore, considering the facts and circumstances of the case discussed above, particularly the long incarceration of applicant of more than two years, in my view, applicant is entitled to be released on bail.

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

19. Let the applicant-**Ramu** 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.

20. 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.

21. 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 :-** 23.11.2023  
SKM