

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44076 of 2023

Applicant :- Ravi Kushwaha

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

Counsel for Applicant :- Shams Uz Zaman, Vijay Kumar Gupta

Counsel for Opposite Party :- G.A., Babita Upadhyay

Hon'ble Sameer Jain, J.

1. Sri Imran Khan, learned AGA for the State apprised the Court that on 09.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant. However, learned AGA for the State and learned counsel appearing on behalf of High Court Legal Services are present.

2. Heard Sri Shams Uz Zaman, learned counsel for the applicant, Sri Imran Khan, learned AGA for the State and Ms. Babita Upadhyay, learned counsel appearing on behalf of High Court Legal Services.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 418 of 2023, under Sections 363, 366, 376 IPC & 5/6 POCSO Act, Police Station- Kotwali, District- Lalitpur, during pendency of the trial in the court below.

4. FIR of the present case was lodged against unknown person and according to the FIR, the daughter of the informant aged about 14 years had gone somewhere from her house.

5. Learned counsel for the applicant submitted that FIR of the present case was lodged on 07.06.2023 against unknown person and after one month i.e. on 06.07.2023 when victim was recovered from Ahmedabad, Gujarat and her statement was recorded under Section 161 Cr.P.C. then she stated that as she was having photographs of the applicant, therefore, her parents badly scolded her and thereafter she left her house and called the applicant and insisted him to take her but when applicant refused to give shelter to her on the ground that she is minor then she threatened that she will commit suicide and thereafter both i.e. applicant and victim had gone to Ahmedabad and started living there and they also

performed marriage.

6. He further submitted that almost similar story was narrated by the victim in her statement recorded under Section 164 Cr.P.C. but in her statement recorded under Section 164 Cr.P.C. she stated that applicant has taken her and against her wishes made physical relationship with her and this fact clearly suggests that under the pressure of her parents subsequently she started making allegation of rape against the applicant.

7. He further submitted that applicant is a young boy aged about 20 years and victim is although, minor girl aged about 14 years but as under the pressure of victim, applicant had to take her, therefore, at least case of bail is made out at this stage.

8. He further submitted that applicant is not having any criminal history and he is in jail since 08.07.2023.

9. Per contra, learned AGA as well as learned counsel appearing on behalf of High Court Legal Services opposed the prayer for bail and submitted that victim is hardly 14 years' old girl, therefore, even if she was consenting party then also it hardly matters but could not dispute the fact that from the statement of the victim recorded under Section 161 Cr.P.C., it appears that due to pressure of the victim, applicant had to take her to Ahmedabad and her statement also suggests that she had already performed marriage with the applicant.

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

11. It is a case in which although, victim appears to be 14 years' old girl but it also appears from the statement of the victim recorded under Section 161 Cr.P.C. that under her pressure, applicant had to take her to Ahmedabad and even as per the statement of the victim, applicant stated her that she is minor, therefore, it is not appropriate for her to accompany him but it appears that on the insistence of the victim, applicant has taken her to Ahmedabad, where they started residing and also performed marriage and although, in the statement recorded under Section 164 Cr.P.C. victim little bit twisted her earlier version and stated that applicant himself has taken her and also made physical relationship with her against her wishes.

12. Although, in view of the provisions of POCSO Act, victim appears to be child as her age is hardly 14 years but considering

the statement of the victim recorded under Section 161 Cr.P.C., I find force in the argument advanced by learned counsel for the applicant that at least he has made out the case for bail.

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

14. Therefore, considering the facts and circumstances of the case discussed above, in the interest of justice, in my considered 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- **Ravi Kushwaha** 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 :- 31.10.2023

KK Patel