

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43791 of 2023

Applicant :- Saurabh Batham

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

Counsel for Applicant :- Bhaiya Ram Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to provisions of SC/ST Act, therefore, notice was issued to the informant.

2. As per office report dated 31.10.2023, notice has been served upon the informant personally. Learned AGA also apprised the Court that notice has been served upon the informant on 11.10.2023. Despite service of notice, none present on behalf of the informant.

3. Heard Sri Dinesh Kumar Bhaskar, Advocate holding brief of Sri Bhaiya Ram Maurya, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.

4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 462 of 2023, under Sections 363, 376 IPC, 5M/6 POCSO Act and Section 3(2)5 SC/ST Act, Police Station Kotwali, District Mainpuri during pendency of the trial.

5. 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 12 years.

6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and in the statement recorded under Section 161 Cr.P.C. victim stated that she herself had gone along with applicant on his motorcycle and thereafter on the way due to the puncture of the tyre they had to stop but in the meantime police arrived and apprehended them.

7. He further submits that on query in her statement recorded under Section 161 Cr.P.C. victim stated that applicant made physical relationship with her, therefore, from her statement recorded under Section 161 Cr.P.C. it appears that as per the victim earlier physical relationship were developed between both of them. He further submits when the statement of the victim under Section 164 Cr.P.C was recorded then she changed her version and stated that she had gone along with applicant and applicant after removing her lower touched her private part with his private part and this fact clearly suggests that under the pressure of her parents she subsequently stated against the applicant.

8. He further submits that although as per school record victim was 12 years old but according to the doctor her radiological age was about 16 years and applicant is also aged about 19 years, therefore, it appears to be a case of adolescent love. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 12.07.2023.

9. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record, the age of the victim is hardly 12 years and even as per doctor her radiological age was around 16 years, therefore, even if she was consenting party then it hardly matters but he could not dispute the fact that the age of the applicant also appears to be 19 years.

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

11. However, from the school record, it appears that victim was aged about 12 years at the time of incident and even as per her radiological age she was 16 years old and she in her statement recorded under Section 161 Cr.P.C. also stated that physical relationship was developed between her and the applicant and in the statement recorded under Section 164 Cr.P.C. she stated that after removing her lower applicant touched her private part with his private part but there are contradictions in both the statements of the victim and even from her both the statements it appears that she was in consensual relationship with the applicant.

12. From the record, it also reflects that applicant is about 19 years old boy, therefore, it appears to be a case of adolescent love.

13. The object behind POCSO Act is to protect the child from sexual abuse and not to punish adolescent love. In my view, by

ignoring the statements of the girl (victim) recorded during investigation, the bail of accused should not be refused.

Further, the law is settled that bail should not be dismissed either for punitive purpose or preventive purpose.

14. Further, applicant is not having any criminal history and in the present matter he is in jail since 12.07.2023.

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

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

17. Let the applicant - **Saurabh Batham** 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.

18. 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.

19. 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

AK Pandey