

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43751 of 2023

Applicant :- Ankit

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

Counsel for Applicant :- Ayush Mishra, Yogendra Misra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA, for the State, submits that notice has been served to the informant of the case on 4.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Yogendra Misra, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.148 of 2023 and P.S.T. No.1479 of 2023, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Khairgarh, District Firozabad during pendency of the trial.
5. FIR of the present case was lodged against the applicant and according to the FIR, informant was having suspicion that his daughter aged about 15 years had gone along with applicant.
6. Learned counsel for the applicant submits that entire allegation of enticement and rape made against the applicant is totally false and baseless.
7. He further submits that victim in her statement under Section 161 Cr.P.C. categorically stated that she herself had gone along with applicant however she also stated that applicant against her

wishes committed rape with her.

8. He further submits that when the statement of the victim was recorded under Section 164 Cr.P.C. then she changed her earlier version and stated that applicant abducted her and committed rape with her.

9. He further submits that applicant and victim are of same age group and victim is actually more than 18 years old while applicant is aged about 19-20 years old and both were having love affair.

10. He further submits that although as per school record at the time of incident victim was around 15-1/2 years old but during investigation intentionally her ossification test was not conducted and appearance wise she looks like major girl.

11. He further submits that it is a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 19.6.2023.

12. Per contra, learned AGA opposed the prayer for bail and submits that as per school record at the time of incident victim was hardly 15-1/2 years old and in both the statements she stated that applicant against her wishes committed rape with her but he could not dispute the fact that during investigation ossification test of the victim could not be conducted and in her statement under Section 161 Cr.P.C. she stated that she on her own wish had gone along with applicant.

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

14. However, from the record it appears that victim was around 15-1/2 years old and she in her statements under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and in her statement under Section 164 Cr.P.C. she also stated that applicant abducted her but from her statement under Section 161 Cr.P.C. it appears that she according to her own wish had gone along with applicant.

15. From the record it appears that applicant is around 20 years old young man and, therefore, argument advanced by learned counsel for the applicant that applicant and victim were having love affair and even appearance wise victim looks like 18 years old cannot be completely brushed aside at this stage.

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

17. Further, applicant is not having any previous criminal history and he is in jail since 19.6.2023.

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

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

20. Let the applicant-**Ankit** 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.

21. 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.

22. 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 :- 30.10.2023
SKM