

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45552 of 2023

Applicant :- Kartik Rajak

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

Counsel for Applicant :- Rakesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA for the State apprised the Court that on 17.10.2023 notice has been served upon the victim of the case. Even as per office report dated 22.11.2023 notice has been served personally upon opposite party no.2. Despite service of notice, none present on behalf of informant.

2. Heard Sri Rakesh Kumar Shukla, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 117 of 2023, under Sections 363, 366, 376(3) IPC and Section 3/4(2) POCSO Act, Police Station Baruasagar, District Jhansi during pendency of the trial.

4. FIR of the present case was lodged against applicant and one another and according to the FIR applicant enticed away the daughter of the informant aged about 14 years.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim herself had gone along with the applicant and she also performed marriage with him and this fact is evident from her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

6. He further submits that however as per school record, the age of the victim at the time of incident was about 14 years but from perusal of her school record, which has been annexed along with instant bail application, it appears that on the date of birth white

marker was used, therefore, no reliance can be placed on such document.

7. He further submits that intentionally during investigation ossification test of the victim was not conducted. He further submits that there is no certificate of the school with regard to the date of birth of the victim and only on the basis of progress report of the victim at this stage, it cannot be said that victim was about 14 years old. He further submits that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. however, disclosed her age as 16 years but in fact she is more than 18 years.

8. He further submits that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not make any allegation against the applicant. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 05.07.2023.

9. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record victim at the time of incident was about 14 years but could not dispute the fact that during investigation no certificate could be procured by the Investigating Officer from the school with regard to date of birth of the victim and only her progress report is on record and during investigation ossification test of the victim was not conducted. He further could not dispute the fact that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that she had gone along with the applicant and performed marriage with him.

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

11. However, from the progress report of the victim, which has been annexed along with instant bail application, it appears that at the time of incident victim was about 14 years old but there is no certificate issued by the school with regard to date of birth of the victim, therefore, in view of the provision of Juvenile Justice Act at this stage merely on the basis of progress report of the victim it cannot be said that victim was about 14 years old.

12. Further, during investigation ossification test of the victim was

not conducted. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that she loved the applicant and she herself had gone along with applicant and she also performed marriage with him.

13. The object behind POCSO Act is to protect the child from sexual abuse and not to punish an accused for love affair. In my view, by ignoring the statements of the girl (victim) recorded during investigation, the liberty of bail to an accused should not be refused.

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

15. Further, applicant is not having any criminal history and in the present matter he is in jail since 05.07.2023.

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

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

18. Let the applicant - **Kartik Rajak** 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.

19. 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.

20. 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

AK Pandey