

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44440 of 2023

Applicant :- Amir

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

Counsel for Applicant :- Syed Shahnawaz Shah

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Dr. S.B.Maurya, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 12.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Syed Shahnawaz Shah, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, 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.118 of 2023, under Sections 363 and 376-DA IPC and Section 5(g)/6 POCSO Act, Police Station Jani, District Meerut 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 14 years.
6. Learned counsel for the applicant submits that FIR of the present case was lodged after five days and actually victim herself had gone along with applicant but after recovery under the pressure of her parents she started making allegation of rape.
7. He further submits that victim along with applicant also

implicated co-accused Deepak and from her statement recorded under Section 161 Cr.P.C. it appears that very casually she made allegation of rape against the applicant and co-accused Deepak.

8. He further submits that although as per FIR victim was around 14 years old but when the statement of the victim was recorded during investigation then she disclosed her age 16 years and during investigation Investigating Officer procured the school record of the victim and according to the school record also she was about 16 years old at the time of incident, but victim in her statement recorded under Section 164 C.P.C. stated before the Magistrate that she is illiterate and, therefore, no reliance can be placed on school certificate of the victim procured by Investigation Officer .

9. He further submits that except the school certificate of the victim, there is no other evidence on record which can show that she was below 18 years old girl as during investigation her ossification test was not conducted.

10. He further submits that co-accused Deepak has already been released on bail by Coordinate Bench of this Court vide order dated 13.7.2023 and the bail order of co-accused Deepak has been annexed as Annexure-7 to the affidavit filed in support of the present bail application and the case of applicant is at par with him.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 27.4.2023, i.e, for the last more than six months.

12. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel

for the applicant.

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

14. Although applicant is named in the FIR and victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that he committed rape with her but she along with applicant also made allegation of rape against co-accused Deepak and it appears that there is no cogent evidence on record at this stage with regard to her age however, during investigation Investigating Officer procured her educational certificate which shows that her age was 16 years at the time of incident but victim in her statement recorded under Section 164 Cr.P.C. stated that she is illiterate and during investigation her ossification test was not conducted.

15. Further, at the time of medical examination Doctor noted that victim is changing her version repeatedly.

16. Further, law is settled the bail application should not be dismissed either punitive or preventive purposes.

17. Further, co-accused Deepak has already been released on bail by Coordinate Bench of this Court and from the statement of the victim recorded during investigation, it appears that the case of applicant is at par with him.

18. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 27.4.2023, i.e., for the last more than six months.

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

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

21. Let the applicant-**Amir** 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.

22. 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.

23. 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 :- 2.11.2023
SKM