

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44239 of 2023

Applicant :- Mohammad Sabir

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

Counsel for Applicant :- Alauddin, Fakhruddin

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. As informed by Sri Anil Kumar Mishra, learned AGA, notice to the informant has been served on 15.10.2023 but none is present on behalf of the informant even in the revised call.
2. Heard Sri Alauddin, learned counsel for the applicant and learned A.G.A. for the State and perused the record.
3. Applicant seeks bail in Case Crime No. 49 of 2023, under Sections 363, 366 of I.P.C., Section 3(2)(v) of SC/ST (P.A.) Act and Sections 11/12 of POCSO Act, Police Station Pathra Bazar, District Siddharth Nagar, during the pendency of trial.
4. As per prosecution story, the applicant is stated to have enticed away the minor daughter aged about 16 years of the informant on 09.07.2023 with an intention to marry her.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case due to ulterior motive. He has nothing to do with the said offence as alleged in the FIR. Learned counsel has further stated that the victim is a consenting party as is evident from her statement recorded u/s 164 Cr.P.C. whereby she has stated that she had somehow taken lift from several persons and had gone to one Goa Chinese Fast Food Dhaba and called the applicant by using the mobile phone of the said Dhaba owner. The applicant had reached there and even had counselled her to return to her house but she relentlessly argued with him and both of them had gone to a temple where priest of the said temple is stated to have informed the police and both the applicant and the victim were arrested. The said statement does not indicate any coercion or force used by the applicant.
6. Learned counsel for the applicant has further stated that as per ossification test report, the age of the victim was found to be above 19 years and the applicant is 20 years old young boy, as such, it is a matter of consensual meeting. A leverage of two years may be granted to the applicant on the upper side. Learned counsel has placed much reliance upon the judgement of Apex Court passed in Jaya Mala Vs. State of J & K, (1982) 2 SCC 538 and Mohd. Imran Khan vs. State (Govt. of NCT of Delhi), (2011) 10 SCC 192, whereby it has been opined that the radiologist cannot be predict the correct date of birth rather there is a long margin of 1 to 2 years on either side. No offence of sexual assault has been levelled against the applicant. There is no criminal history of the applicant. The applicant is languishing in jail since 10.07.2023.

In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with trial.

7. Per contra, learned A.G.A. has vehemently opposed the bail application but unable to dispute the submissions raised by the learned counsel for the applicant and also the fact that the applicant has no criminal history.

8. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and considering the complicity of accused, severity of punishment, at this stage, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

9. Let the applicant- **Mohammad Sabir** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/ intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

iv. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

v. The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

11. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 28.10.2023
Siddhant