

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44695 of 2023

Applicant :- Akshay Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Somdev Dixit

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Somdev Dixit, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 517 of 2023, under Sections 363, 366, 376 IPC, Police Station- Kishni, District- Mainpuri, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant and according to the FIR, applicant enticed away the daughter of the informant aged about 17 years. It is further mentioned in the FIR that daughter of the informant has also taken Rs. two thousand from her home.

4. Learned counsel for the applicant submitted that it is a case of love affair, which is itself evident from the statement of the victim recorded under Section 161 Cr.P.C. but when the statement of the victim was recorded under Section 164 Cr.P.C. then although, she stated that she had gone along with the applicant but in addition she stated that against her wishes applicant committed rape with her. He further submitted that although, in the FIR age of the victim was disclosed as 17 years but when during investigation, she was found more than 18 years' old then provisions of POCSO Act has been removed.

5. He further submitted that applicant is not having any criminal history and he is in jail since 10.08.2023.

6. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that from the statements of the victim recorded during investigation, it appears that it is a case of love affair and during investigation, it was revealed that victim was

major girl aged about more than 18 years.

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

8. Victim during investigation was found major and from her statement recorded under Section 161 Cr.P.C. it appears that it is a case of love affair, although, in her statement recorded under Section 164 Cr.P.C. she stated that applicant against her wishes made physical relationship with her but even from her statement recorded under Section 164 Cr.P.C. her consent is reflected, therefore, in my view, applicant is entitled to be released on bail.

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

10. Let the applicant- **Akshay Kumar** 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.

11. 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.

12. 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 :- 19.10.2023

KK Patel