

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45482 of 2023

Applicant :- Shivam

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

Counsel for Applicant :- Narayan Swaroop, Lalit Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Jhamman Ram, learned AGA for the State apprised the Court that on 14.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Narayan Swaroop, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 92 of 2023, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Nayagaon, District- Etah, during pendency of the trial in the court below.

4. FIR of the present case was lodged against unknown persons under Section 363 IPC and according to the FIR, sister of the informant aged about 16 years had gone somewhere from her house.

5. Learned counsel for the applicant submitted that name of the applicant was revealed in the present matter through the statement of the victim recorded under Section 161 Cr.P.C. and from her statement recorded under Section 161 Cr.P.C., it appears that she according to her own wish had gone alongwith the applicant and thereafter she performed marriage with him but when her statement was recorded under Section 164 Cr.P.C. then she changed her earlier version and stated that applicant enticed her away and also committed rape with her.

6. He further submitted that although, victim in her statements disclosed her age as 16 years but as per the school record, her age was around 15 years at the time of incident and during investigation, her ossification test was not conducted and

therefore, at this stage it cannot be said that deceased was below 18 years' old girl.

7. He further submitted that it is a case of love affair and appearancewise victim looked like major girl aged about more than 18 years and applicant is not having any criminal history and he is in jail since 04.08.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record, victim was hardly 15 years and 3 months' old and she in her statement recorded under Section 164 Cr.P.C. stated that applicant enticed her away and also committed rape with her but could not dispute the fact that during investigation, ossification test of the victim was not conducted and victim in her statement recorded under Section 161 Cr.P.C. stated that she on her own had gone alongwith the applicant and also performed marriage with him. He further could not dispute the fact that according to the informant and victim, her aged was around 16 years.

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

10. Although, as per the school record, victim appears to be 15 years and 3 months' old girl at the time of incident but according to the informant and victim herself, she was around 16 years' old and therefore, it appears that there is some dispute with regard to the age of the victim and during investigation, ossification test of the victim was not conducted.

11. Further, however, in the statement recorded under Section 164 Cr.P.C. victim stated that applicant enticed her and also committed rape with her but in her statement recorded under Section 161 Cr.P.C., which was recorded earlier, she stated that she on her own had gone alongwith the applicant and also performed marriage with him, therefore, there are material contradictions in both the statements of the victim.

12. Further, it appears to be a case of love affair and argument advanced by learned counsel for the applicant that appearancewise victim looked like major girl cannot be completely ruled out, especially, when there is some dispute with regard to the age of the victim in view of the statements of the informant and victim and her school record.

13. Further, applicant is also a young man aged about 20 years and

he is not having any criminal history and is in jail since 04.08.2023.

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

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

16. Let the applicant- **Shivam** 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.

17. 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.

18. 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 :- 28.10.2023

KK Patel