

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44705 of 2023

Applicant :- Sonu

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

Counsel for Applicant :- Adeel Ahmad Khan

Counsel for Opposite Party :- G.A.,Rakesh Tripathi

Hon'ble Sameer Jain,J.

1. Heard Sri Adeel Ahmad Khan, learned counsel for the applicant, Sri Rakesh Tripathi, learned counsel for the informant and Sri Jhamman Ram, learned AGA-I for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 517 of 2018, under Sections 363, 366, 376 IPC and Section 3/4/5J(II)/6 POCSO Act, Police Station Kotwali, District Maharajganj during pendency of the trial.

3. FIR of the present case was lodged against applicant and others and according to the FIR the daughter of the informant was missing since 19.07.2018 and after inquiry informant came to know that applicant enticed away his daughter.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and daughter of the informant was major girl and she according to her own wish had gone along with applicant and also performed marriage with her and these facts are evident from the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

5. He further submits that although as per school record at the time of incident the age of the victim was about sixteen and half years but according to her ossification test report at the time of incident victim was around 19 years, therefore, she appears to be major.

6. He further submits that after performing marriage applicant and victim had left their native place and during investigation the arrest of the applicant was stayed by this Court, therefore, applicant could not become aware about the submission of the charge-sheet against him and when he came to know then he appeared before the trial court but his bail application was dismissed.

7. He further submits that applicant is not having any criminal history and in the present matter he is in jail since September, 2023.
8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.
9. Learned counsel appearing on behalf of the informant also conceded the fact that at the time of incident victim was major and she had already performed marriage with the applicant and even informant and victim both are not having any objection, if applicant be enlarged on bail.
10. I have heard learned counsel for the parties and perused the record of the case.
11. Although, it appears that applicant appeared before the trial court after about five years but it also appears that victim had already performed marriage with him, therefore, defence taken by the applicant appears to be probable.
12. Further, victim, who is wife of the applicant, herself is deponent of the case and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that she had already performed marriage with the applicant and even as per school record she was more than 16 years of age at the time of incident and according to the doctor her radiological age was around 19 years.
13. Further, neither victim nor informant are having any objection if applicant be enlarged on bail. Further, applicant is not having any criminal history and in the present matter he is in jail since September, 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 - **Sonu** 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 :- 2.11.2023

AK Pandey