

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44617 of 2023

Applicant :- Vivek @ Vikram

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

Counsel for Applicant :- Nanhe Lal Tripathi, Prateek Prajapati

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 on 25.10.2023 notice has been served to the informant of the case.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Nanhe Lal Tripathi, 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. 0448 of 2023, under Sections 363 and 366 IPC and Section 3/4 POCSO Act, Police Station Sahibabad, District Ghaziabad during pendency of the trial.
5. FIR of the present case was lodged against the applicant and according to the FIR, informant was having suspicion that applicant has enticed away her daughter aged about 15 years.
6. Learned counsel for the applicant submits that entire allegation of enticement made against the applicant is totally false and baseless and actually daughter of the informant herself had gone along with applicant and this fact is evident from her both the statements recorded under Sections 161 and 164 Cr.P.C.
7. He further submits that victim in her statement recorded under

Section 161 Cr.P.C. stated that she had gone along with applicant and physical relationship was developed between both of them with her consent and when her statement under Section 164 Cr.P.C. was recorded then she also stated that she had performed marriage with applicant and, therefore, it appears to be a case of love affair.

8. He further submits that although according to the school record victim was around 15-1/2 years old at the time of incident but in fact she is major aged about 18 years old girl and even appearance wise she looks like major girl.

9. He further submits that intentionally during investigation ossification test of the victim was not conducted.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 6.5.2023, i.e., for almost six months.

11. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim was around 15-1/2 years old at the time of incident but he could not dispute the fact that during investigation her ossification test was not conducted and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. did not state anything against the applicant and stated that she herself had gone along with applicant.

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

13. However, from the school record of the victim it appears that she was around 15-1/2 years old at the time of incident but victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that she had gone along with applicant according to her own wish and with her consent physical

relationship was developed between both of time and in her statement recorded under Section 164 Cr.P.C. she also added that she had already performed marriage with applicant.

14. Further, admittedly during investigation ossification test of the victim was not conducted.

15. The object behind the POCSO Act was to protect a child from sexual abuse and not to punish accused for consensual relationship.

16. In view of this Court by ignoring the statement of the victim recorded during investigation it would be improper to reject the bail application of accused on the ground that victim at the time of incident was below 18 years old.

17. Further, in the Indian Society it is not uncommon to disclose the age of a child even less than his/her actual age in school record.

18. Further, law is settled that bail application should not be dismissed either for punitive or preventive purposes.

19. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 6.5.2023, i.e., for almost six months.

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

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

22. Let the applicant-**Vivek @ Vikram** 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.

23. 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.

24. 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