

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45817 of 2023

Applicant :- Vinod @ Bittu

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

Counsel for Applicant :- Ajay Kumar

Counsel for Opposite Party :- G.A.,Jitendra Pal Singh Jadaun

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard Sri Ajay Kumar, learned counsel for the applicant, Sri J.P.S. Jadaun, learned counsel for the informant and Sri Kunwar Tejendra Bahadur, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 171 of 2023, under Sections 363, 366, 376, 328, 323, 506, 509 IPC & 3/4 POCSO Act & 67 I.T. Act, Police Station- Lohamandi, District- Agra, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and others on 18.08.2023 and according to the FIR, applicant used to teach dance to the daughter of the informant aged about 15 years and in the month of April when daughter of the informant had gone to learn dance from him, he by administering some intoxicated substance committed rape with her and also prepared her obscene photographs and videos and threatened her to viral the same and thereafter several times committed rape with her.

5. It is further mentioned in the FIR that in the month of July, applicant after enticement, took the daughter of the informant to Delhi and again committed rape with her and threatened her if she will not perform marriage with him then he will eliminate her entire family.

6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim, who is illiterate girl, was major aged about 18 years and applicant and victim both were having love affair and

both also performed marriage and they also executed a marriage agreement, which has been annexed alongwith the supplementary affidavit but subsequently due to caste of the applicant, some dispute arose and after four month, FIR of the present case was lodged.

7. He further submitted that although, in both the statements recorded during investigation victim made allegation of rape against the applicant but even from her both the statements and from the contents of the FIR, it appears that she travelled upto Delhi alongwith the applicant and, therefore, it appears that with her consent, she accompanied the applicant upto Delhi. He further submitted that even as per the ossification test report, victim was 17 years' old, therefore, possibility cannot be ruled out at this stage that, she was major, even more than 19 years' old.

8. He further submitted that applicant is not having any criminal history and he is in jail since 19.08.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per the mother of the victim and even according to the victim, she was hardly 15 years' old and she in her both the statements recorded during investigation made allegation of rape against the applicant and, therefore, considering the statements of the victim, applicant should not be released on bail.

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

11. However, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant but story narrated by her does not inspire any confidence.

12. Further, FIR of the present case was lodged after four months and even in the FIR and in both the statements of the victim, it has been stated that victim herself accompanied the applicant upto Delhi and from the perusal of the marriage agreement, which has been annexed alongwith the supplementary affidavit, it appears that victim and applicant both performed marriage with each other.

13. Further, admittedly, victim is an illiterate girl and according to the CMO, her radiological age is 17 years and, therefore, possibility cannot be ruled out that she may be even more than 18 years' old.

14. Further, applicant is not having any criminal history and he is in jail since 19.08.2023.

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

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

17. Let the applicant- **Vinod @ Bittu** 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.

18. 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.

19. 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 :- 9.11.2023

KK Patel