

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44905 of 2023

Applicant :- Raj Rathor @ Prashant Rathor @ Monu Rathor

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

Counsel for Applicant :- Yogendra Misra, Ayush Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Pradeep Kumar, learned AGA apprised the Court that on 10.10.2023 notice has been served upon the informant. Despite service of notice none present on behalf of the informant.

2. Heard Sri Yogendra Misra, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 398 of 2023, under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station Kotwali Nagar, District Etah during pendency of the trial.

4. FIR of the present case was lodged against one Piyush and according to the FIR informant was having doubt that nominated accused Piyush has enticed away his daughter aged about 17 years.

5. Learned counsel for the applicant submitted that applicant was not named in the FIR but when the victim was recovered then she disclosed the name of applicant. He further submits that although in the statement recorded under Section 161 Cr.P.C. victim stated that against her wishes applicant made physical relationship with her but when her statement under Section 164 Cr.P.C. was recorded then she stated that she was having relationship with the applicant for last four months and according to her own wish physical relationship were developed between both of them.

6. He further submits that although as per school record victim was sixteen years and seven months old but during investigation her ossification test was not conducted and appearance wise she looked like more than 18 years. He further submits that applicant is also 19 years old boy and it is a case of teenage love. He further

submits that applicant is not having any criminal history and in the present matter he is in jail since 03.07.2023.

7. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim was below 18 years old girl, therefore, her consent is immaterial but could not dispute the fact that applicant is also 19 years old boy.

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

9. Although, from the school record, it reflects that victim was about 16 years and 7 months old at the time of incident but she in her statement recorded under Section 164 Cr.P.C. categorically stated that she was having relationship with applicant for last four months and physical relationship were developed between both of them according to her own sweet will. Further, applicant is also 19 years old boy, therefore, it appears to be a case of teenage love.

10. Further, law is settled that bail application should not be dismissed either for punitive or preventive purposes and applicant is not having any criminal history and in the present matter he is in jail since 03.07.2023.

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

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

13. Let the applicant - **Raj Rathor @ Prashant Rathor @ Monu Rathor** 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.

14. 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.

15. 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 :- 26.10.2023

AK Pandey