

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44867 of 2023

Applicant :- Ravi Kumar

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

Counsel for Applicant :- Mohd. Monis, Akal Raj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Imran Khan learned AGA apprised the Court that notice has been served to the informant on 18.10.2023. Despite service of notice, none appeared on behalf of the informant.
2. Heard Mohd. Monis, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 380 of 2022, under Sections 363, 366, 376 IPC and section 3/4 POCSO Act, Police Station Rani Ki Sarai, District Azamgarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against unknown persons and according to the FIR daughter of the informant aged about 16 years had gone alongwith his brother to the house of her relative but thereafter she did not return.
5. Learned counsel for the applicant submitted that nobody was named in the FIR but when statement of the victim was recorded under section 161 Cr.P.C. then she stated that she herself had gone alongwith the applicant and also performed marriage with him and thereafter applicant has been made accused in the present.
6. He further submitted that even the victim in her statement recorded under section 164 Cr.P.C. also stated that she had already performed marriage with the applicant.
7. He further submitted that although as per school record age of the victim at the time of incident was about 17 years but in fact, she is a major girl aged about more than 18 years and intentionally, during investigation her ossification test was not conducted.
8. He further submitted that from the record, it reflects that it is a case of love affair and victim has already performed marriage with the applicant and applicant is having no criminal history and he is in jail in the present matter since 9.8.2023.
9. Per contra, learned AGA opposed the prayer for bail but could

not dispute the arguments on facts advanced by learned counsel for the applicant.

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

11. However, from the school record at the time of incident, victim appears to be about 17 years old but during investigation her ossification test was not conducted.

12. Further, victim in her both the statements recorded under sections 161 and 164 Cr.P.C. stated that she is major and she herself had gone along with the applicant and also performed marriage with him.

13. Further, applicant is having no previous criminal and he is in jail in the present matter since 9.8.2023.

14. The object of the POCSO Act is to protect the child from sexual abuse and not to punish for love.

15. In my view, by ignoring the statements of the victim recorded during investigation it is not proper to reject the bail application of an accused.

16. Law is settled that bail application should not be rejected either for punitive or preventive purposes.

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

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

19. Let the applicant-**Ravi Kumar**, 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.

20. 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.

21. 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 :- 6.11.2023

Ankita