

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44865 of 2023

Applicant :- Shakeel Chaudhary

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

Counsel for Applicant :- Alauddin, Fakhruddin

Counsel for Opposite Party :- G.A., Shahroze Khan

Hon'ble Sameer Jain, J.

1. Counter affidavit filed today on behalf of the informant is taken on record.
2. Heard Sri Alauddin Khan, learned counsel for the applicant, Sri Mohd. Zafaryaab Khan, learned Advocate holding brief of Sri Shahroze Khan, learned counsel for the informant and Sri Imran Khan, learned AGA, for the State.
3. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.93 of 2023, under Sections 363, 366 and 376 IPC, Section 3(2) (5) SC/ST Act and Section 5/6 POCSO, Police Station Kathela Samay Mata, District Siddharth Nagar during pendency of the trial.
4. FIR of the present case was lodged against the applicant on 2.8.2023 and according to the FIR, the daughter of the informant aged about 17 years had gone to school but did not return and informant received an information from SSP that her daughter wanted to accompany a boy and when informant arrived at Nepal Border then found that applicant wanted to entice her daughter.
5. Learned counsel for the applicant submits that entire allegation

made against the applicant is totally false and baseless and FIR of the present case was lodged after five days and this fact clearly suggests that on the basis of false allegation applicant was made accused in the present matter.

6. He further submits that in the FIR there is no allegation of rape against the applicant and only allegation against the applicant was that he wanted to entice the daughter of the informant but when the statement of the victim was recorded under Sections 161 and 164 Cr.P.C. then she stated that earlier 5-6 times physical relationship were developed between her and applicant.

7. He further submits that with the consent of the victim physical relationship were developed.

8. He further submits that however entire allegation of rape and physical relationship made against the applicant is false but even if it is accepted then the consent of the victim is apparent from the record.

9. He further submits that as per school record also victim is more than 17 years old and according to ossification test report she is above 19 years and, therefore, it appears that she is major more than 18 years of age.

10. He further submits that from the statement of the victim recorded under Section 164 Cr.P.C. it is apparent that victim herself had gone along with applicant and she did not make any allegation against the applicant.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 4.8.2023.

12. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant is a married man and in spite of that he enticed the daughter of the informant, who was, according to her school record, below 18 years old but both the learned counsels could not dispute the fact that initially in the FIR there was no allegation of rape and even from her both the statements recorded under Sections 161 and 164 Cr.P.C. it reflects that she was consenting party.

13. Both the learned counsels further could not dispute the fact that as per ossification test of the victim she was about 19 years old.

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

15. However, from the record it reflects that applicant is a married man but even as per school record the age of the victim appears to be about 17-1/2 years and as per her ossification test report she was above 19 years old.

16. Further, there was no allegation of rape in the FIR against the applicant however, FIR was lodged after five days on the basis of information furnished by the victim and it appears that at that time victim did not disclose that earlier applicant made physical relationship with her.

17. Further, even from the statements of the victim it reflects that the present matter does not appears to be a case of forceful rape and it appears that with the consent of the victim physical relationship were developed between both the parties and in the statement recorded under Section 164 Cr.P.C. victim did not make

any allegation against the applicant and categorically stated that she herself had gone along with applicant.

18. 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 August, 2023.

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-**Shakeel Chaudhary** 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 :- 23.11.2023

SKM