

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45380 of 2023

Applicant :- Golu @ Ajmer

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

Counsel for Applicant :- Hari Bans Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Udayveer Singh, Advocate filed his power on behalf of the informant, today in the Court, which is taken on record.
2. Heard Sri Hari Bans Singh, learned counsel for the applicant, Sri Udayveer Singh, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 19 of 2023 (Special Case No. 186 of 2023), under Sections 363, 366, 370, 376, 506 IPC, Section 3/5(1) U.P. Prohibition of Unlawful Conversion of Religious Act, 2021, Section 3(2)5 SC/ST Act and Section 5(Tha)/6 of POCSO Act, Police Station Tindwari, District Banda during pendency of the trial.
4. FIR of the present case was lodged against applicant on 24.01.2023 and according to the FIR on 23.01.2023 daughter of the informant did not return after closing the shop and when even after search, she could not be traced then informant lodged FIR of the present case under suspicion against applicant that he enticed away his daughter aged about 16 years.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and actually victim and applicant both loved each other and victim herself had gone along with applicant and also performed marriage with him and this fact is evident from her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

6. He further submits that even as per school record, it appears that victim at the time of incident was 17 years old and intentionally during investigation her ossification test was not conducted. He next submits that actually victim is major girl and even appearance wise also she looked like a major girl and intentionally her wrong date of birth has been mentioned by the parents of the victim in the school record.

7. He further submits that when Investigating Officer could not find any material against the applicant even after recording the statements of victim under Sections 161 Cr.P.C. and 164 Cr.P.C. then after the statement under Section 164 Cr.P.C., he recorded the second statement of the victim under Section 161 Cr.P.C., which is totally impermissible and in the second statement recorded under Section 161 Cr.P.C. victim stated that earlier applicant forcibly made physical relationship with her but in this statement also she did not state that under pressure, she stated in favour of the applicant before the Magistrate during her recording of statement under Section 164 Cr.P.C.

8. He next submits that it is a case of love affair and victim had already performed marriage with the applicant and applicant is not having any criminal history and in the present matter he is in jail since 07.02.2023 i.e. for more than six months.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail but could not dispute the argument 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, it reflects that victim was about 17 years old at the time of incident but during investigation her ossification test was not conducted.

12. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that she loved the applicant and she herself had gone along with applicant and has also performed marriage with the applicant.

13. Further, from the record, it reflects that quite surprisingly the Investigating Officer recorded the second statement of the victim even after recording her statement under Section 164 Cr.P.C., in

which, she however stated that earlier forcibly applicant made physical relation with her but in view of the statements of the victim recorded under Section 161 Cr.P.C.(first statement) and 164 Cr.P.C., her second statement under Section 161 Cr.P.C. can not be believed at this stage.

14. Further, the law is settled that bail should not be dismissed either for punitive purpose or preventive purpose.

15. Further, applicant is not having any criminal history and in the present matter he is in jail since 07.02.2023 i.e. for more than six months.

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

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

18. Let the applicant - **Golu @ Ajmer** 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.

19. 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.

20. 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

AK Pandey