

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45597 of 2023

Applicant :- Santosh

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

Counsel for Applicant :- Pankaj Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA for the State apprised the Court that on 17.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Pankaj Kumar Sharma, 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. 90 of 2022, under Sections 363, 366, 376-D IPC & 5/6 POCSO Act, Police Station- Kasganj, District- Kasganj, during pendency of the trial in the court below.
4. FIR of the present case was lodged against unknown person and according to the FIR, younger sister of the informant aged about 16 years had gone to ease herself but did not return.
5. Learned counsel for the applicant submitted that nobody was named in the FIR but after two and half months, when the victim was recovered and her statement was recorded under Section 161 Cr.P.C. then she disclosed the name of the applicant. He further submitted that even from her statement recorded under Section 161 Cr.P.C., it appears that victim herself had gone alongwith the applicant, however, she stated in this statement that under the pretext of marriage, applicant made physical relationship with her. He further submitted that when the statement of the victim was recorded under Section 164 Cr.P.C. then she changed her entire version and introduced one another accused Guddu and stated that Guddu and applicant both committed rape with her. He further submitted that this fact clearly suggests that victim is not a reliable witness.

6. He further submitted that after the recovery, again victim had gone along with the applicant and had performed marriage with him and her marriage certificate has been annexed as Annexure No. 9 to the affidavit. He further submitted that although, as per the school record, victim was around 15 years' old at the time of incident but when her ossification test was conducted then in view of the CMO concerned, she was around 21 years' old, therefore, it appears that her wrong date of birth has been mentioned in her school record.

7. He further submitted that bail application of co-accused Guddu has already been allowed by co-ordinate Bench of this Court.

8. He further submitted that applicant was not having any previous criminal history but subsequent to this case when again victim had gone along with the applicant and performed marriage with him then another FIR under Sections 363, 366 IPC was lodged against him. He further submitted that applicant is in jail since 08.07.2023.

10. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. However, from the school record, it reflects that victim was around 15 years' old at the time of incident and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant committed rape with her but in her statement recorded under Section 164 Cr.P.C., she introduced one another co-accused Guddu too and also made allegation of rape against him.

13. Further, in the statement recorded under Section 161 Cr.P.C., victim stated that under the false promise of marriage, applicant sexually exploited her for three months and at the time of departure, she also has taken jewellery and Rs. 10,000/- from her house but when her statement was recorded under Section 164 Cr.P.C. then she changed her earlier version and stated that applicant and one another co-accused abducted her, therefore, it appears that there are major contradictions in both the statements of the victim.

14. Further, it is a case in which after recovery of the victim, again victim had gone along with the applicant and this time she also performed marriage with the applicant and marriage certificate of the victim and applicant has been annexed along with the instant

bail application.

15. Further, co-accused Guddu, who was introduced by the victim in her statement recorded under Section 164 Cr.P.C. and against him there was also allegation of rape, has already been released on bail by co-ordinate Bench of this Court.

16. Further, applicant is in jail since 08.07.2023 and he is not having any previous criminal history to his credit.

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- **Santosh** 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 :- 30.10.2023

KK Patel