

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45269 of 2023

Applicant :- Kundan

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

Counsel for Applicant :- Raj Kishore Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA apprised the Court that on 15.7.2023 notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Manu Upadhyay, Advocate holding brief of Sri Raj Kishore Dubey, 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. 1450 of 2022, under Sections 363, 376(2) IPC & Section 5L/6 POCSO Act, Police Station Indirapuram, District Ghaziabad, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 4.11.2022 against unknown person and according to the FIR daughter of the informant aged about 14 years was missing from her house since 3rd November, 2022.

5. Learned counsel for the applicant submitted that nobody was named in the FIR but after recovery of the victim when her statement was recorded then she disclosed the name of the applicant.

6. He further submitted that although victim in her both the statements recorded under sections 161 and 164 Cr.P.C. stated that applicant enticed her away and forcibly performed marriage with her but in fact, she herself had gone alongwith the applicant and with her consent she performed marriage with him.

7. He further submitted that even from her both the statements it reflects that she traveled up to Bihar but she did not raise any alarm and this fact shows that after recovery under the pressure of

informant, she has falsely stated against the applicant.

8. He further submitted that however as per the school record at the time of incident, victim was around 14 years old but in fact, she was about 18 years old and even appearance wise she looks like a major girl.

9. He further submitted that during investigation ossification test of the victim has not been conducted.

10. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 1.1.2023 i.e. for more than ten months.

11. Per contra, learned AGA opposed the prayer for bail and submitted that victim is hardly 14 years old girl and she made allegation of enticement and forceful marriage against the applicant in her both the statements recorded under sections 161 and 164 Cr.P.C. and on the other hand applicant is an adult and therefore, applicant should not be released on bail.

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

13. From the school record of the victim, it appears that at the time of incident, she was about 14 years old but during investigation, her ossification test was not conducted.

14. Further, however, victim in her both the statements recorded under sections 161 and 164 Cr.P.C. stated that applicant enticed her away and forcibly performed marriage with her but from her both the statements, it appears that she traveled up to State of Bihar alongwith the applicant and in between, she did not raise any alarm.

15. Further, applicant also appears to be a young man aged about 20 years and his marriage has already been performed with the victim and as far as allegation of forceful marriage is concerned that can only be decided by the trial court, during trial.

16. Further, applicant is having no criminal history and he is in jail in the present matter since 1.1.2023 i.e. for more than ten months.

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

18. Therefore, considering the facts and circumstances of the case,

discussed above, in my view, applicant who is in jail for last more than ten months and he is having no criminal history, is entitled to be released on bail.

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

20. Let the applicant-**Kundan**, 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.

21. 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.

22. 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