

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46952 of 2023

Applicant :- Basant Kumar

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

Counsel for Applicant :- Rahul Kumar Mishra, Satish Chandra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Shatruhan Yadav, learned AGA for the State apprised the Court that on 19.10.2023 notice has been served upon the informant. Despite service of notice, none present on behalf of the informant.

2. Heard Sri Satish Chandra Singh, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 167 of 2022, under Sections 363, 366, 376(3) IPC, Section 3/4 POCSO Act and 2(2)(5) SC/ST Act, Police Station Bhawaniganj, District Siddharth Nagar during pendency of the trial.

4. FIR of the present case was lodged against unknown persons and according to the FIR on 17.12.2022 the daughter of the informant aged about 15 years had gone somewhere from house.

5. Learned counsel for the applicant submitted that nobody was named in the FIR but when victim was recovered and her statement under Section 161 Cr.P.C. was recorded then she disclosed the name of applicant but even from her statement recorded under Section 161 Cr.P.C., it appears that she was around 17 years old and she loved the applicant and she had gone along with the applicant on her own wish. He further submits that even as per statement recorded under Section 164 Cr.P.C. victim had performed the marriage with the applicant.

6. He further submits that as per school record victim was aged about twelve and half years but in fact her wrong date of birth has been mentioned in the school record as according to the CMO concerned, the age of the victim was about 17 years. He next submits that applicant is not having any criminal history and in the present matter he is in jail since 09.02.2023 i.e. for more than six months.

7. Per contra, learned AGA opposed the prayer for bail and submits that from the school record at the time of incident victim was hardly twelve and half years, therefore, her consent is immaterial but could not dispute the fact that as per CMO concerned, the age of the victim was 17 years and he also could not dispute the fact that victim also disclosed her aged as 17 years during investigation.

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

9. However, as per school record of class 2nd of the victim, it appears that she was about twelve and half years old but she disclosed her aged in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. as 17 years and even according to the CMO concerned, her age was about 17 years.

10. Further, victim in her statement recorded under Section 161 Cr.P.C. categorically stated that she herself had gone along with applicant at Motihari, Bihar and she loved the applicant and in the statement recorded under Section 164 Cr.P.C. she also stated that she had performed marriage with the applicant.

11. The object behind POCSO Act is to protect the child from sexual abuse and not to punish the adolescent love. In my view, by ignoring the statements of the girl (victim) recorded during investigation, the liberty of bail of an accused should not be curtailed.

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

13. Further, applicant is not having any criminal history and in the present matter he is in jail since 09.02.2023 i.e. for more than six months.

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

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

16. Let the applicant - **Basant 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.

17. 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.

18. 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 :- 3.11.2023

AK Pandey