

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45426 of 2023

Applicant :- Shiva

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

Counsel for Applicant :- Jay Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Kunwar Tejendra Bahadur, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 19.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Jay Prakash Singh, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.311 of 2023, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Ajeetmal, District Auraiya during pendency of the trial.
5. FIR of the present case was lodged against the applicant and two others and according to the FIR, applicant along with other co-accused persons enticed away the niece of the informant aged about 14 years.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually victim is major girl aged about 18 years and she herself had gone along with applicant and this fact is evident from her both the

statements recorded under Sections 161 and 164 Cr.P.C.

7. He further submits that however as per school record at the time of incident victim was around 14 years old but as per ossification test report her age is either 18 years or even more than 18 years and, therefore, it appears, she was major.

8. He further submits that it appears to be a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 26.7.2023.

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

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

11. However, as per school record at the time of incident victim was around 14 years old but according to the Doctor, her radiological age was either 18 years or more than 18 years old, therefore, there are material differences in both the documents.

12. Further, in Indian society it is not uncommon to mention less age of the child than his or her actual age.

13. Further, victim in her both the statements recorded during investigation categorically stated that she had gone herself along with applicant and in both the statements she also stated that she wants to live with applicant and in the statement recorded under Section 161 Cr.P.C. she stated that she has already performed marriage with applicant and therefore, it appears to be a case of love affair.

14. The object of POCSO Act is to protect the child from sexual abuse and not to punish for love affair.

15. In my view, by ignoring the statements of the victim recorded during investigation it is not proper to reject the bail application of an accused.

16. Further, law is settled that bail application should not be dismissed either for punitive or preventive purposes.

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 26.7.2023.

18. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant 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-**Shiva** 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 :- 7.11.2023
SKM