

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45869 of 2023

Applicant :- Lavkush

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

Counsel for Applicant :- Sudhanshu Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA apprised the Court that on 26.10.2023 notice has been served to the informant. Despite service of notice none appeared on behalf of the informant.

2. Heard Sri Sudhanshu Pratap Singh, 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. 163 of 2023, under Sections 363, 366, 376(3) IPC, Section 4(2) POCSO Act, Police Station Rasoolabad, District Kanpur Dehat, during pendency of the trial in the court below.

4. FIR of the present case was lodged against the applicant on 3.5.2023 and according to the FIR on 10.4.2023 two unknown persons enticed away the daughter of the informant aged about 15 years.

5. It is further mentioned in the FIR that daughter of the informant also took Rs. 45,000/- and some jewelries alongwith her.

6. Learned counsel for the applicant submitted that applicant was not named in the FIR and when the statement of the victim was recorded under sections 161 and 164 Cr.P.C. then she stated that she herself had gone alongwith the applicant and therefore, applicant was made accused in the present matter.

7. He further submitted that although as per the prosecution, age of the victim was about 15 years but actually she was major girl aged about 18 years and even appearance wise she looks like major.

8. He further submitted that during investigation, Investigating

Officer procured a transfer certificate of the victim of class-8 and according to it, age of the victim at the time of incident was 15 years but intentionally, during investigation her ossification test was not conducted.

9. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 4.6.2023.

10. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record, victim is hardly 15 years old and therefore, her consent is immaterial.

11. He fairly conceded that during investigation, ossification test of the victim was not conducted.

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

13. However, from the record it appears that at the time of incident, victim was about 15 years old but during investigation, it appears that Investigating Officer procured transfer certificate of the victim except transfer certificate of the victim of class-8, there is no other educational record of the victim on record.

14. The Apex Court in the case of ***P. Yuvaprakash Vs. State Rep. By Inspector of Police(Criminal Appall No.(S). 1898 of 2023 dated 18.7.2023*** observed that under the provisions of POCSO Act, age of the child cannot be ascertained on the basis of transfer certificate and therefore, merely on the basis of transfer certificate of the victim, at this stage, it cannot be said that she was about 15 years old.

15. Further, admittedly during investigation no ossification test of the victim was conducted and further, in her both the statements recorded during investigation she categorically stated that she loved the applicant and she herself had gone alongwith the applicant and also shown her desire to live with the applicant and therefore, it is a case of love affair and applicant is also a young man aged about 21 years.

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

17. In my view by ignoring the statements of the victim recorded during investigation it would not be appropriate to reject the bail application of an accused.

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

19. Further, applicant is having no criminal history and he is in jail in the present matter since 4.6.2023.

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

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

22. Let the applicant-**Lavkush**, 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.

23. 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.

24. 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 :- 9.11.2023

Ankita