

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47203 of 2023

Applicant :- Rahul Kumar

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

Counsel for Applicant :- Shri Ram Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Pradeep Kumar, learned A.G.A. apprised the Court that notice has been served to the informant on 24.10.2023 but despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Shri Ram Pandey, learned counsel for the applicant and Sri Pradeep Kumar, learned A.G.A. for the State.
3. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 92 of 2023 under sections 363, 366, 342, 328, 376 (2)(N) IPC and 5/6 POCSO Act, Police Station Meja, District Allahabad.
4. FIR of the present case was lodged against the applicant and according to the FIR, applicant enticed away the daughter of the informant aged about 15 years.
5. Learned counsel for the applicant submits that entire allegations made against the applicant are totally false and actually victim is a major girl aged about 18 years and she herself gone along with the applicant. This fact is evidence from her statement recorded under section 161 Cr.P.C.
6. He further submits that when statement of the victim was recorded under section 164 Cr.P.C., she admitted that she loved the applicant but she also added that applicant forcefully made physical relationship with her. It appears that subsequently under the pressure of her parents, she made allegation of rape against the applicant in her statement under section 164 Cr.P.C.
7. He further submits that although as per school record, the victim was aged about 14 and a half years but according to the doctor, her radio-logical age was above 16 years but below 18 years.

Therefore, it appears that she was around 18 years old.

8. It is next submitted that it is a case of love affair and applicant does not have any previous criminal history and he is in jail since 28.2.2023 i.e. for more than six months.

9. *Per Contra*, learned A.G.A. although opposed the prayer for bail but he could not dispute the fact that according to the C.M.O. concerned, the victim was more than 16 years of age and she in her statement recorded under section 161 Cr.P.C., did not state anything against the applicant.

10. I have heard both sides and perused the record of the case.

11. However, from the school record, it appears that victim, at the time of the incident, was aged about 14 and a half years old but according to the C.M.O. concerned, her radio-logical age was more than 16 years and further, in her statement under section 164 Cr.P.C., she made allegation of rape against the applicant but in this very statement, she also admitted the fact that she loved the applicant and earlier when her statement was recorded under section 161 Cr.P.C., she did not make any allegation against the applicant and stated that she herself gone along with the applicant.

12. The object of P.O.C.S.O. Act is to prevent the child from sexual abuse and not to punish for adolescent love. Further, law is also settled that bail application should not be dismissed for punitive or preventive purposes.

13. In the case at hand, it appears that applicant is also a teenager, aged about 19 years and he is not having any previous criminal history and is in jail since February, 2023 i.e. for more than six months, therefore, considering the facts and circumstances of the case as discussed above, I am of the view that applicant is entitled to be released on bail.

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

15. Let the applicant **Rahul 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.

16. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicant.

17. 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

Madhurima