

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45699 of 2023

Applicant :- Lavedi @ Dharmveer @ Dipesh

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

Counsel for Applicant :- Suresh Singh, Ritesh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 21.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Ritesh Singh, learned counsel for the applicant and Sri Imran Khan, 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. 458 of 2023, under Sections 363, 376 IPC and Section 3/4 POCSO Act, Police Station Banda, District Shahjahanpur during pendency of the trial.
5. FIR of the present case was lodged against the applicant under Section 363 IPC and according to the FIR applicant enticed away the daughter of the informant aged about 12 years.
6. Learned counsel for the applicant submits that totally on the basis of false facts FIR of the present case was lodged and actually victim is major aged about 18 years and she herself had gone along with applicant. He further submits that victim in her both the

statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. stated that she loved the applicant and she herself had gone along with applicant and also performed marriage with him.

7. He further submits that however, as per school record at the time of incident victim was around 15 years 11 months old but according to CMO concerned radiological age of the victim was about 18 years, therefore, at this stage, it cannot be said that victim was below 18 years.

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 27.07.2023.

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, from the school record, it appears that victim at the time of incident was about 16 years old but according to CMO concerned at the time of incident her radiological age was about 18 years.

12. Further, victim in her both the statements recorded during investigation categorically stated that she herself had gone along with applicant and started living with him and in the statement recorded under Section 164 Cr.P.C. she further stated that she had already performed marriage with the applicant.

13. Therefore, from the record it reflects that it is a case of love

affair.

14. The object behind the POCSO Act was to protect a child from sexual abuse and not to punish for love affair.

15. Further, in my view, in cases like present one by ignoring the statements of the victim recorded during investigation bail application of an accused should not be dismissed.

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 July, 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- **Lavedi @ Dharmveer @ Dipesh** 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 :- 17.11.2023
SKM