

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45821 of 2023

Applicant :- Praveen

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

Counsel for Applicant :- Syed Wajid Ali, Santosh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Amit Kumar Srivastava, Advocate submits that he has filed his power on behalf of the applicant alongwith the instant bail application but his name could not be shown in the cause list.
2. Sri Sarvesh Kumar Pathak, learned Brief Holder apprised the Court that notice has been served to the informant in the month of August, 2023 but despite service of notice none appeared on behalf of the informant.
3. Heard Sri Amit Kumar Srivastava, learned counsel for the applicant and Sri Sarvesh Kumar Pathak, learned Brief Holder for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 345 of 2023, under Sections 363, 366, 376(2)N IPC and 5L/6 POCSO Act, Police Station Izzat Nagar, District Bareilly, during pendency of the trial in the court below.
5. FIR of the present case was lodged against the applicant and according to the FIR, applicant has enticed away the daughter of the informant aged about 15 years.
6. Learned counsel for the applicant submitted that although in the FIR, age of the FIR has been disclosed as 15 years but actually she is more than 18 years old girl and this fact is evident from her ossification test report which shows she was aged about 18 years.
7. He further submitted that even as per the school record, victim was more than 17 years old.
8. He further submitted that victim in her statement recorded under section 161 Cr.P.C. categorically stated that she herself had gone alongwith the applicant and she loved the applicant and she want to perform marriage with him and she did not

make any allegation of rape or of physical relationship but subsequently when her statement under section 164 Cr.P.C. was recorded then she changed her version and stated that applicant enticed her away and committed rape with her and this fact also suggests that under the pressure of her parents subsequently, she changed her version.

9. He further submitted that victim and applicant were having love affair and both are more than 18 years old teenagers and photograph of the victim & applicant also shows that they were having love affair which have been annexed as annexure-10 to the affidavit filed in support to the instant bail application.

10. He further submitted that applicant is having no previous criminal history and he is in jail in the present matter since 24.6.2023.

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

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

13. However, victim in her statement recorded under section 164 Cr.P.C. stated that applicant enticed her away and committed rape with her and according to the school record she was below 18 years old girl but even as per school record she was more than 17 years old and according to the ossification test victim was about 18 years old.

14. Further, victim in the statement under section 161 Cr.P.C. did not make any allegation against the applicant and stated that she herself had gone alongwith the applicant and from the annexure-10 of the affidavit which are photographs of the victim and applicant, it appears that both were having love affair, therefore, it appears to be a case of teenage love.

15. Law is settled that bail should not be dismissed either for punitive or preventive purposes.

16. Further, applicant is having no previous criminal history and he is in jail in the present matter since 24.6.2023.

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

18. Accordingly, without expressing any opinion on the merits

of the case, the instant bail application is **allowed**.

19. Let the applicant-**Praveen** 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.

20. 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.

21. 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 :- 31.10.2023

Ankita