

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46220 of 2023

Applicant :- Pankaj

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

Counsel for Applicant :- Santosh Kumar Singh, Vikash Pathak

Counsel for Opposite Party :- G.A., Pradumn Tripathi

Hon'ble Sameer Jain, J.

1. Heard Sri Santosh Kumar Singh, learned counsel for the applicant and Sri Pradumn Tripathi, learned counsel for the informant and learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 142 of 2023, under Sections 363, 366, 376(3) IPC and 3/4 POCSO Act, Police Station Titavi, District Muzaffar Nagar, during pendency of the trial in the court below.
3. 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 17 years.
4. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and baseless and actually victim is major girl aged about more than 18 years and she herself had gone alongwith the applicant and this fact is evident from her statement recorded under section 161 Cr.P.C. but when her statement under section 164 Cr.P.C. was recorded then she changed her version and stated that applicant abducted her and thereafter forcibly performed marriage with her and thereafter made physical relationship with her against her wishes.
5. He further submitted that there are material contradictions in both the statements of the victim and actually victim and applicant both are having love affair and both were classmates and however, as per school record age of the victim was about 16 years but during investigation, her ossification test was not conducted and as according to her, she was studying in class-12, therefore, this fact itself shows that she is more than 18 years old girl and it appears that her wrong date of birth has been mentioned by her

parents in her school record.

6. He further submitted that it is a case of love affair and applicant is not having any previous criminal history and he is in jail in the present matter since 4.6.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is about 16 years old and she in her statement recorded under section 164 Cr.P.C. stated that applicant committed rape with her and forcibly performed marriage with her but could not dispute the fact that in the statement recorded under section 161 Cr.P.C. victim stated that she is student of class-12 and applicant was her classmate and she herself had gone alongwith the applicant and she loved the applicant.

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

9. However, from the school record of the victim it appears that she was about 16 years of age and in the statement recorded under section 164 Cr.P.C. she stated that applicant committed rape with her but earlier when her statement under section 161 Cr.P.C. was recorded then she stated that she studied in class-12 and applicant was her classmate and both loved with each other and she also performed with her according to her own wish, therefore, there is material contradiction in her both the statements recorded during investigation.

10. Further during investigation, ossification test of the victim was not conducted and I find forced in the argument advanced by learned counsel for the applicant that as from the record it reflects that victim is the student of class-12, therefore, she might be more than 18 years of age.

11. In our Indian society this is not uncommon to disclose the less age of the children than his/her actual age in the school record.

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

13. Further, applicant is not having any previous criminal history and he is in jail in the present matter since 4.6.2023.

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

bail.

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

16. Let the applicant-**Pankaj**, 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.

17. 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.

18. 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