

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48232 of 2023

Applicant :- Mukesh Kumar

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

Counsel for Applicant :- Gyanendra Pratap Singh

Counsel for Opposite Party :- G.A.,Sunil Kumar

Hon'ble Sameer Jain,J.

1. None appeared on behalf of the informant even in the revised called.
2. On 21.11.2023 CJM/POCSO Court concerned was directed to produce the victim before the CMO concerned for her ossification test.
3. Pursuant to the order passed by this Court ossification test of the victim was conducted and report of the CMO concerned is on record and according to the age certificate issued by CMO Ballia the radiological age of the victim was found between 18-20 years.
4. Heard Sri Gyanendra Pratap Singh, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.140 of 2023, under Sections 363, 366 and 376(3) IPC, Section 3/4(2) POCSO Act, Police Station Narhi, District Ballia during pendency of the trial.
6. FIR of the present case was lodged against the applicant and his family members and according to the FIR, applicant enticed away the daughter of the informant aged about 15 years under the pretext to perform marriage with her.
7. Learned counsel for the applicant submits that entire

allegation made against the applicant is totally false and baseless and actually victim is major and she herself had gone along with applicant and also performed marriage with him and this fact is evident from her both the statements recorded under Sections 161 and 164 Cr.P.C.

8. He further submits that victim in her both the statements recorded during investigation disclosed her age 19 years but as per school record at the time of incident she was about 15 years old and after considering this fact this Court directed the CMO concerned to conduct ossification test of the victim and now ossification test report of the victim is on record and as per certificate issued by CMO concerned the age of the victim was about 18-20 years and this fact clearly suggests that victim is major and she disclosed her correct date of birth in her both the statements.

9. He further submits that even appearance wise victim looks like major girl.

10. He further submits that it is a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 18.6.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that according to the school record of the victim, at the time of incident she was 15 years old, therefore, her consent is immaterial but he could not dispute the fact that as per CMO concerned, her radiological age is between 18-20 years.

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

13. However, as per school record of the victim at the time of incident she was 15 years old but as per the ossification test

report of the victim which was conducted on the direction given by this Court, her radiological age was found between 18-20 years.

14. Further, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that she herself had gone along with the applicant and also solemnized marriage with him.

15. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 18.6.2023.

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

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

18. Let the applicant-**Mukesh 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.

19. 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.

20. 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 :- 12.12.2023

SKM