

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46390 of 2023

Applicant :- Mohit Kumar Mishra

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

Counsel for Applicant :- Ajay Sengar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Prakash Chandra Pandey, Advocate, filed his power today on behalf of the informant, which is taken on record.
2. Heard Sri Ajay Sengar, learned counsel for the applicant, Sri Prakash Chandra Pandey, learned counsel for the informant and Sri Jhamman Ram, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 1140 of 2022, under Sections 363, 366, 376 IPC & 3/4 POCSO ACT & 3(2)(V) SC/ST Act, Police Station- Auraiya, District- Auraiya, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and according to the FIR, applicant enticed away the daughter of the informant aged about 17 years.
5. Learned counsel for the applicant submitted that daughter of the informant herself had gone alongwith the applicant and she also performed marriage with him and this fact is evident from her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.
6. He further submitted that although, as per the school record, victim was around 17 years' old at the time of incident but she in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. disclosed her aged as 19 years and during investigation, her ossification test was not conducted.
7. He further submitted that even today victim is residing as wife of the applicant. He further submitted that even victim has conceived with the applicant.

8. He further submitted that neither victim nor informant is having any objection if the applicant be enlarged on bail.

9. He further submitted that applicant is not having any criminal history and he is in jail since 02.10.2023.

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

11. Learned counsel for the informant also conceded the fact that victim and applicant both have performed marriage and victim is pregnant with the applicant and neither victim nor informant is having any objection if applicant be enlarged on bail.

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

13. Considering the argument advanced by learned counsel for the applicant coupled with the statements of the victim recorded during investigation and the fact that even victim and informant both are having no objection, if applicant be enlarged on bail, in my view, applicant is entitled to be released on bail.

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

15. Let the applicant- **Mohit Kumar Mishra** 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 condition, the prosecution will be at liberty to move an application before this Court for cancellation of the 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 :- 2.11.2023

KK Patel