

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48438 of 2023

Applicant :- Ganesh

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

Counsel for Applicant :- Vijay Prakash Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri R.N. Srivastava, learned AGA for the State apprised the Court that notice has been served upon the informant on 21.10.2023. Despite service of notice, none present on behalf of the informant.

2. Heard Sri Vijay Prakash Chaturvedi, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 135 of 2023, under Sections 354, 376 IPC and Section 3/4 POCSO Act, Police Station Mishrauliya, District Siddharth Nagar during pendency of the trial.

4. FIR of the present case was lodged on 24.07.2023 against applicant under Sections 354 IPC and 7/8 POCSO Act and according to the FIR on 23.06.2023 applicant tried to drag the daughter of the informant aged about 17 years and after hearing shriek of the victim when people arrived at spot then he ran away.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and FIR of the present case was lodged after one month. He further submits that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there is any allegation of rape but in the statement recorded under Section 164 Cr.P.C. victim stated that applicant was her boy friend and physical relationship were developed between both of them.

6. He further submits that although as per school record, victim was 17 years old but according to radiological report she was about 19 years old, therefore, it appears that she was major. He

further submits that it is a case of love affair and when this fact was revealed to the informant then FIR of the present case was lodged. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 30.08.2023.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that there is no allegation of rape in the statement of the victim recorded under Section 161 Cr.P.C. He further could not dispute the fact that as per ossification test report, the age of the victim was around 19 years.

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

9. Considering the fact that neither in the statement of the victim recorded under Section 161 Cr.P.C. nor in the FIR there is any allegation of rape against the applicant and victim in her statement recorded under Section 164 Cr.P.C. stated that applicant is her boy friend and even according to her school record she was around 17 years and according to CMO concerned she was 19 years old, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant - **Ganesh** 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.

12. 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.

13. 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

AK Pandey