

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47267 of 2023

Applicant :- Rahul Raikwar

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

Counsel for Applicant :- Narendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Pradeep Kumar, learned AGA for the State apprised the Court that notice has been served upon the informant on 25.10.2023. Despite service of notice, none present on behalf of the informant.
2. Therefore, in view of the observation made by this Court in the case of Ajeet Chaudhary Vs. State of U.P. and another passed in Criminal Misc. Bail Application No. 45784 of 2020, the instant bail application is being heard.
3. Heard Sri Narendra Kumar Tiwari, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.
4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 91 of 2023, under Sections 363, 366, 376 IPC, Section 4 POCSO Act and 3(2)(5), 3(2)(5Ka) SC/ST Act, Police Station Srinagar, District Mahoba during pendency of the trial.
5. FIR of the present case was lodged against unknown persons and according to the FIR some unknown person has enticed away the daughter of the informant aged about 17 years.
6. Learned counsel for the applicant submitted that applicant was not named in the FIR and during investigation his involvement was revealed and on the basis of false allegation, he has been made accused in the present matter. He further submits that from the perusal of the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. it appears that she was major and she according to her own wish had gone along with applicant.

7. He further submits that as per record of class 6th of the victim at the time of incident she was around 17 years old but according to CMO certificate she was around 19 years old, therefore, it cannot be said that victim was below 18 years. He further submits that it is a case of love affair and applicant is not having any criminal history and in the present matter he is in jail since 21.07.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that as per ossification test report victim was around 19 years old and she in her both the statements recorded during investigation did not make any allegation of rape against the applicant.

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

10. However, from the school record of the victim, it appears that at the time of incident she was around 17 years old but according to CMO certificate she was about 19 years old and she in her both the statements recorded during investigation did not make any allegation of rape against the applicant and categorically stated that she had gone along with the applicant according to her own wish and performed marriage with the applicant.

11. Further, victim in her both the statements recorded during investigation disclosed her age as 20 years and applicant is not having any criminal history and in the present matter he is in jail since 21.07.2023.

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

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

14. Let the applicant - **Rahul Raikwar** 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.

15. 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.

16. 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 :- 6.11.2023

AK Pandey