

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47574 of 2023

Applicant :- Sajeevan Yadav

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

Counsel for Applicant :- Indra Deo Yadav, Yashpal Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA for the State apprised the Court that on 30.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Yashpal Yadav, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 207 of 2023, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Gambhirpur, District- Azamgarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against unknown person and according to the FIR, daughter of the informant aged about 17 years had gone from the house of her maternal uncle i.e. informant of the case and could not be traced.
5. Learned counsel for the applicant submitted that applicant was not named in the FIR and when the statement of the victim was recorded under Section 161 Cr.P.C. then she stated that she herself had gone alongwith the applicant and also performed marriage with him and thereafter applicant was made accused in the present matter.
6. He further submitted that victim in her statement recorded under Section 164 Cr.P.C. disclosed her age as 17 years. He further submitted that even from the statement of the victim recorded under Section 164 Cr.P.C. her consent is apparent.
7. He further submitted that however, from the school record of the victim, she was around sixteen and half years' old at the time of incident but actually she was major girl aged about more than 18 years and appearance wise also she looked like

major girl and intentionally, during investigation, her ossification test was not conducted.

8. He further submitted that it is a case of love affair and after marriage with the applicant, victim started living with him in Bombay.

9. He further submitted that applicant is not having any criminal history and he is in jail since 23.08.2023.

10. Per contra, learned AGA opposed the prayer for bail and submitted that according to the school record, victim, at the time of incident, was around sixteen and half years' old, therefore, her consent is immaterial but could not dispute the fact that during investigation, ossification test of the victim was not conducted and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she had performed marriage with the applicant.

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

12. However, from the school record of the victim, it appears that at the time of incident she was sixteen and half years' old but during investigation, her ossification test was not conducted.

13. Further, in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C., victim categorically stated that she loved the applicant and she herself had gone alongwith the applicant and also performed marriage with him and in the statement recorded under Section 164 Cr.P.C. she also stated that after marriage, she started living with the applicant in Bombay, therefore, it appears that it is a case of love affair and consensual relationship.

14. The object of POCSO Act is to protect the child from sexual abuse and not to punish the accused for love affair. In my view, by ignoring the statements of the victim recorded during investigation, it is not proper to dismiss the bail application of the accused.

15. Law is settled that bail should not be dismissed either for preventive or for punitive purposes.

16. Further, applicant is not having any criminal history and he is in jail since 23.08.2023.

17. Therefore, considering the facts and circumstances of the

case discussed above, in my view applicant is entitled to be released on bail.

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

19. Let the applicant- **Sajeevan Yadav** 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.

20. 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.

21. 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 :- 20.11.2023

KK Patel