

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48053 of 2023

Applicant :- Baiju Rajbhar

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

Counsel for Applicant :- Satyendra Pandey

Counsel for Opposite Party :- G.A., Dharmendra Kumar Tripathi

Hon'ble Sameer Jain, J.

1. Heard Sri Satyendra Pandey, learned counsel for the applicant, Sri D.K. Tripathi, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State.
2. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 105 of 2022 under sections 363, 366, 376 IPC and 5/6 POCSO Act, Police Station Ramkola, District Kushinagar.
3. FIR of the present case was lodged against the applicant and according to the FIR, sister of the informant, aged about 15 years, was missing from her home and informant later came to know that applicant has enticed her away.
4. Learned counsel for the applicant submits, on the basis of false allegation, applicant has been made accused in the present matter and from both the statements of the victim recorded under sections 161 and 164 Cr.P.C., it appears that victim herself had gone along with the applicant and also performed marriage with him. He further submits, in the statement recorded under section 164 Cr.P.C., victim also stated that she is pregnant with the applicant.
5. He further submits that victim has now delivered a child of the applicant and neither the victim nor the informant is having any objection if the applicant is enlarged on bail.
6. He next submits as per report of the C.M.O. concerned, the radio-logical age of the victim was around 18 years and according to her school record also, she was around 18 years. He further submits that applicant has no previous criminal history and he is in jail since 19.8.2023.

7. *Per contra*, learned A.G.A. opposed the prayer for bail but he could not dispute the argument on facts as advanced by learned counsel for the applicant.

8. Learned counsel appearing on behalf of the informant also concedes the arguments advanced by learning counsel for the applicant and submits that neither the informant nor the victim is having any objection if the applicant is enlarged on bail.

9. I have heard all sides and perused the record of the case.

10. Considering the fact that at the time of the incident, victim was around 18 years of age and she did not state anything against the applicant and even victim and the informant are not having any objection if the applicant is enlarged on bail, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant **Baiju Rajbhar** be released on bail in the aforesaid case on² 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.

13. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicant.

14. 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 :- 8.11.2023
Madhurima