

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50424 of 2023

Applicant :- Rohit

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

Counsel for Applicant :- Amit Rai

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Pradeep Kumar, learned A.G.A. for the State-respondent apprise the Court that on 30.10.2023, notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri Amit Rai, learned counsel for the applicant and ShriPradeep Kumar, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.165 of 2023, under Sections 363, 366, 376 IPC & Sections 3/4 POCSO Act, Police Station Mansoorpur, District Muzaffar Nagar, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 19.06.2023 against applicant and according to the FIR, applicant enticed away the daughter of the informant aged about seventeen years. It is further mentioned in the FIR that daughter of the informant has also taken Rs.17,000/- and jewelleryes from her house.

5. Learned counsel for the applicant submits that entire allegations made against applicant are totally false and baseless and actually victim is a major girl aged about eighteen years and she herself had

gone alongwith with the applicant and performed marriage with him.

6. He further submits that in her statement recorded under Section 161 Cr.P.C., victim stated that she loved the applicant and had gone herself alongwith the applicant but subsequently when her statement was recorded under Section 164 Cr.P.C., she stated that applicant abducted her and committed rape with her.

7. He further submits that however as per school record, at the time of incident, victim was seventeen years and one month old but according to her Birth Certificate issued by Nagar Nigam, her age at the time of incident was eighteen years and seven months and therefore, there are material contradictions in her date of birth mentioned in both the documents and this fact shows that actually victim is a major girl.

8. He further submits that during pendency of the investigation, the applicant and the victim both approached to this Court in the writ jurisdiction but before hearing, applicant was arrested, therefore, the petition filed by the applicant and the victim became infructuous.

9. He further submits that actually the victim and the applicant both were having love affair and they also performed marriage with each other and their marriage certificate has been annexed as Annexure No.10 to the affidavit.

10. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 24.09.2023, therefore, he may be released on bail.

11. Per contra, learned AGA opposed the prayer for bail but could

not dispute the argument on facts advanced by learned counsel for the applicant.

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

13. Considering the fact that there are material contradictions in the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and from Annexure No.10 to the affidavit, it appears that applicant and victim both solemnized marriage with each other, 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- **Rohit**, 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 :- 24.11.2023
Zafar