

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46787 of 2023

Applicant :- Manju Sonkar

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

Counsel for Applicant :- Poonam Srivastava, Anil Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Imran Khan learned AGA apprised the Court that on 31.10.2023 notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Anil Kumar Srivastava, 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. 65 of 2023, under Sections 363, 366, 376(3), 504, 506 IPC and Section 5/6 POCSO Act, Police Station Badausa, District Banda, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and others and according to the FIR on 29.5.2023 in the absence of her parents applicant and other accused enticed away the victim from her house who was aged about 15 years.
5. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and actually in relation, applicant is the Jija of the victim and victim herself had gone along with the applicant and in the statement recorded under section 161 Cr.P.C. she did not make any allegation of rape or physical relationship against the applicant but when her statement under section 164 Cr.P.C. was recorded then she stated that applicant committed rape with her.
6. He further submitted that in the statement recorded under section 164 Cr.P.C. she further stated that she loved the applicant and she wanted to perform marriage with her and she herself stated that under the pressure of this case she will perform marriage with

the applicant and in the statement under section 164 Cr.P.C. she also stated that applicant should leave his wife and children and accept her and all these facts clearly suggest that actually at any cost victim wanted to perform marriage with the applicant and when applicant refused to perform marriage with her as he is already married then in the statement under section 164 Cr.P.C. she started making allegation of rape against him.

7. He further submitted that although victim is about 15 years old girl but applicant neither ever enticed her nor made any physical relationship with her.

8. He further submitted that applicant is having no previous criminal history and he is in jail in the present matter since 22.6.2023.

9. Per contra, learned AGA opposed the prayer for bail and submitted that victim is hardly 15 years old girl and applicant is her Jija in relation and in her statement recorded under section 164 Cr.P.C. victim stated that applicant made physical relationship with her against her wishes but could not dispute the fact that in the statement recorded under section 164 Cr.P.C. victim further stated that she loved the applicant and wanted to perform marriage with him and also stated that under the pressure of the instant case she will perform marriage with him.

10. He further could not dispute the fact that victim in her statement under section 161 did not make any allegation of rape against the applicant.

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

12. Although, from the perusal of the record, it reflects that victim was hardly 15 years old at the time of incident and she in her statement recorded under section 164 Cr.P.C. stated that applicant in relation is her Jija and he made physical relationship with her against her wishes but no such allegation of rape and physical relationship was made by the victim in her statement recorded under section 161 Cr.P.C.

13. Further, victim in her statement under section 164 Cr.P.C. also stated that she wanted to perform marriage with applicant as she loved him and under the pressure of the instant case she will perform marriage with him and she wanted that victim after leaving her wife and children perform marriage with her.

14. Therefore, considering the statement of the victim recorded under section 164 Cr.P.C, the defence taken by the applicant cannot be completely ruled out, at this stage.

15. Further, applicant is having no criminal history and he is in jail in the present matter since 22.6.2023.

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

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

18. Let the applicant-**Manju Sonkar** 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.

19. 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.

20. 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

Ankita