

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48113 of 2023

Applicant :- Hashim

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

Counsel for Applicant :- Adesh Kumar, Barkha Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Ramanuj Tiwari and Smt. Archana Singh, Advocates filed their powers on behalf of the informant i.e. opposite party no.2 and Child Welfare Committee i.e. opposite party no.4, today in the Court, which are taken on record.

2. Heard Sri Adesh Kumar, learned counsel for the applicant, Sri Ramanuj Tiwari, learned counsel for the informant, Smt. Archana Singh, learned counsel appearing on behalf of Child Welfare Committee and Sri Pradeep Kumar, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 501 of 2023, under Sections 328, 376, 506 IPC and Section 3/4 POCSO Act, Police Station Sardhna, District Meerut during pendency of the trial.

4. FIR of the present case was lodged against applicant and others on 07.07.2023 and according to the FIR applicant committed rape with the daughter of the informant aged about 15 years on 10.06.2023 and Bhabhi of the applicant also prepared obscene video and under the threat to viral the same, applicant again committed rape with her. It is further mentioned in the FIR that the obscene video of the victim has been posted by the applicant on Instagram.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and FIR of the present case was lodged after several months. He next submits that although from the FIR and both the statements of the victim recorded during investigation, it appears that applicant

prepared obscene video of the victim but during investigation no such video of the victim could be recovered.

6. He further submits that in the second statement recorded during investigation victim stated that she never saw the alleged obscene video. He further submits that these facts clearly suggests that totally on the basis of false allegation, applicant has been made accused in the present matter. He further submits that actually victim is about 18 years old girl and victim and applicant both were having love affair but informant was against against their relationship and when in spite of best effort of the informant, victim did not left the applicant, then she lodged FIR of the present case. He further submits that the fact that applicant and victim is having love affair is also evident from the statements of the villagers, which have been annexed along with instant bail application.

7. He further submits that victim is illiterate girl, therefore, with regard to her age only her ossification test is on record and according to the ossification test report, the age of victim is 16 years, therefore, it cannot be said that victim was below 18 years as there may be two years variation in the age ascertained by the doctor. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 26.07.2023.

8. Per contra, learned AGA as well as learned counsel for the informant and counsel appearing on behalf of Child Welfare Committee opposed the prayer for bail and submits that as per CMO concerned radiological age of the victim was 16 years and she in her both the statements recorded during investigation stated that applicant committed rape with her but both the counsels could not dispute the fact that although as per allegation applicant also prepared obscene video of the victim but during investigation no such video of the victim could be recovered. They further could not dispute the fact that villagers in their statements recorded by the Investigating Officer stated that applicant and victim were having love affair and informant opposed their relationship.

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

10. However, victim in her both the statements recorded under

Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against applicant but story narrated by the victim in her both statements appears to be improbable.

11. Further, although it is case of the informant and victim that applicant also prepared obscene video of the victim and alleged obscene video also posted by him on Instagram but during investigation no such video of the victim could be recovered. Further, from the statements of the villagers, which were recorded by the Investigating Officer during investigation, it reflects that applicant and victim both were having love affair and informant opposed their relationship.

12. Further, victim is illiterate girl and according to CMO concerned her radiological age is 16 years, therefore, at this stage, it cannot be said that victim was even below 18 years of age.

13. Further, in the light of the statement of the villagers the defence taken by the applicant cannot be completely brushed aside at this stage.

14. Further, the law is settled that bail should not be dismissed either for punitive purpose or preventive purpose.

15. Further, applicant is not having any criminal history and in the present matter he is in jail since 26.07.2023.

16. Therefore, 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 - **Hashim** 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 :- 8.11.2023

AK Pandey