

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47443 of 2023

Applicant :- Rajeshwar Prasad Yadav @ Rajeshwar Yadav

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

Counsel for Applicant :- Gaurav Kakkar

Counsel for Opposite Party :- G.A., Pramod Kumar Srivastava, Prem Chandra Chaurasia

Hon'ble Sameer Jain, J.

1. Heard Sri Gaurav Kakkar, learned counsel for the applicant, Sri Pramod Kumar Srivastava, learned counsel for the informant and Dr. S.B. Maurya,, learned AGA-I for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 21 of 2023, under Sections 363, 366, 376-D, 377, 344, 506 IPC & 5/6 POCSO Act & 3(2) (v) SC/ST Act, Police Station- Manda, District- Prayagraj, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 07.02.2023 under Section 363 IPC against unknown person and according to the FIR, daughter of the informant aged about 15 years had gone somewhere from her house on 31.01.2023.
4. Learned counsel for the applicant submitted that nobody was named in the FIR but during investigation when the daughter of the informant i.e. victim of the case was recovered after about five months and her statement was recorded under Section 161 Cr.P.C. then she stated that applicant is the gram pradhan and he enticed her away and confined her for last several months and committed rape with her.
5. He further submitted that similar allegation of rape and sexual exploitation has been made by the victim in her statement recorded under Section 164 Cr.P.C. but in the statement recorded under Section 164 Cr.P.C., she completely changed the manner of incident. He further submitted that from perusal of both the statements of the victim, it appears that story narrated by her is based on false and fabricated facts and no reliance can be placed on such hypothetical version.
6. He further submitted that actually applicant is the husband of

gram pradhan and a consensual relationship was developed between applicant and victim and victim forced him to live with her after leaving his family including his wife and children. He further submitted that even from the statements of some independent witnesses, it appears that victim was living according to her own wish alongwith applicant and she was free to roam anywhere and even she used to go to the market for her daily chores.

7. He further submitted that even from the medical report of the victim, it appears that she was having tattoo on her right shoulder of the name of the applicant and this shows that she was in love with the applicant but after recovery under the pressure of her parents, she started making allegation of rape against the applicant.

8. He further submitted that there is dispute with regard to the age of the victim mentioned in her school records. He further submitted that as per the first attended school of the victim, her date of birth is 10.08.2002 and as per the record of second school, her date of birth is 08.11.2008 and according to the first attended school, she was 20 years' old at the time of incident. He further submitted that as per the age certificate issued by corporation, victim was more than 19 years' old. He further submitted that even as per the ossification test report, age of the victim was around 17 years and, therefore, even her ossification test report also suggests that she may be around 19 years' old.

9. He further submitted that however, applicant is a married man and he is also having children and it can be an unethical act on the part of the applicant to make relation with the victim but it cannot be said that applicant committed any offence.

10. He further submitted that applicant is not having any criminal history and he is in jail since 19.07.2023.

11. Per contra, learned AGA as well as learned counsel for the informant vehemently opposed the prayer for bail and submitted that applicant is a married and adult man and he is the husband of village pradhan, therefore, he was having responsibilities on his shoulder towards the society but he forcibly due to his influence, firstly abducted the victim and thereafter continuously for about five months sexually exploited her.

12. They further submitted that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that applicant sexually exploited her but both the counsels could not dispute the fact that victim was

living with the applicant for last almost five months and from the perusal of the statements of the independent witnesses recorded by the Investigating Officer during investigation, it reflects that victim was free to roam anywhere and even she used to go to market and further, during her medical examination, doctor found tattoo on her shoulder of the name of the applicant.

13. They further could not dispute the fact that a specific averment with regard to consensual relationship has been averred by the applicant in paragraph nos. 30, 31 and 32 of the affidavit filed in support of the instant bail application.

14. They further could not dispute the fact that as per the age certificate issued by the corporation and first attended school of the victim, she was major at the time of alleged incident of rape and even as per the CMO concerned, radiological age of the victim was around 17 years.

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

16. However, from the record, it reflects that victim made allegation of rape against the applicant in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. and it also appears that applicant is an adult and married man and is also husband of the village pradhan but from the record, it also reflects that victim stayed with the applicant for more than five months although, as per the prosecution, applicant forcibly detained her in a room but from the perusal of the statements of independent witnesses recorded by the IO during investigation including statement of the landlord of the applicant, it appears that victim was not detained in the house and she was free to move anywhere and even she used to go to the market.

17. Further, as per the record of first attended school of the victim, she was more than 19 years' old at the time of incident. Further, from the record of second school of the victim, she was about 15 years' old and as per the age certificate issued by the corporation, age of the victim, at the time of incident, was around 19 years and as per the report of CMO concerned, radiological age of the victim was around 17 years, therefore, I find force in the argument advanced by learned counsel for the applicant that at this stage, it cannot be said that victim was below 18 years of age.

18. Further, from the medical report of the victim, it appears that at the time of medical examination, doctor found tattoo on

the right shoulder of the victim with the name of the applicant.

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

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

21. Let the applicant- **Rajeshwar Prasad Yadav @ Rajeshwar 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.

22. 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.

23. 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