

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47090 of 2023

Applicant :- Shavi

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

Counsel for Applicant :- Chandra Prakash Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Dr. S.B.Maurya, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 5.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Chandra Prakash Pandey, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.451 of 2023, under Sections 363 and 376 IPC and Section 5/6 POCSO Act, Police Station Kannauj, District Kannauj during pendency of the trial.
5. FIR of the present case was lodged against the applicant under Section 363 IPC and according to the FIR, applicant enticed away the daughter of the informant aged about 14 years along with money and jewellery.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually victim, i.e., daughter of the informant herself had gone along with applicant.
7. He further submits that as per statement of the victim recorded

under Section 161 Cr.P.C., she is illiterate and, therefore, only document with regard to her age is her ossification test and according to her ossification test she is about 16-17 years old.

8. He further submits that as there may be variation of two years of either side in the radiological age, therefore, victim may be even more than 18 years.

9. He further submits that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that she loved applicant and she herself had gone along with him, therefore, it is a case of consent and love affair.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 27.7.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that applicant is 25 years old married adult and he enticed the victim, who is below 18 years of age and further however, she in her statement recorded under Section 161 Cr.P.C. stated that she is illiterate girl but during investigation Investigating Officer procured a certificate from Abdul Haleem Arabia School Kusum Khor, Kannauj and according to the Principal of the Institution the date of birth of the victim is 5.8.2009 and according to her school record at the time of incident victim was hardly 14 years old.

12. Learned AGA further submits that even according to the Doctor, her radiological age is not more than 17 years and, therefore, prima facie it appears that she is below 18 years old girl.

13. Learned AGA further submits that as per medical report of the

victim it appears that she also became pregnant with the applicant and, therefore, considering the facts and circumstances of the case, applicant should not be released on bail.

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

15. However, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that she herself had gone along with applicant and she appears to be consenting party but applicant admittedly is a married man aged about 25 years and he is also having children.

16. On the other hand, victim even as per her ossification test report appears to be child below 18 years of age, therefore, her consent is immaterial.

17. Further, even from the perusal of the medical report of the victim it appears that she was pregnant and, therefore, prima facie it appears that due to relationship with applicant she has become pregnant.

18. The object behind the POCSO Act is to protect a child from sexual abuse. In case at hand prima facie it appears that applicant, who is major and married adult seduced the victim and sexually exploited her.

19. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

20. Accordingly, the instant bail application is rejected.

21. 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 :- 21.11.2023

SKM