

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48682 of 2023

Applicant :- Jaljit Singh @ Gurjeet Singh

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

Counsel for Applicant :- Kuldeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri R.N. Srivastava, learned AGA for the State apprised the Court that on 07.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Kuldeep Kumar, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 101 of 2022, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Arniya, District- Bulandshahr, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 29.05.2022 against unknown person and according to the FIR, since 23.05.2022 daughter of the informant aged about 17 years was missing from her home.

5. Learned counsel for the applicant submitted that nobody was named in the FIR but when the victim was recovered and her statement was recorded under Section 161 Cr.P.C. then she disclosed her age as 17 years and stated that she herself had gone alongwith the applicant and also performed marriage with him and after that applicant was made accused in the present matter.

6. He further submitted that victim in her statement recorded under Section 164 Cr.P.C. also stated that she herself had gone alongwith the applicant and performed marriage with him. He further submitted that however, as per the school record, victim was 17 years' old at the time of incident but intentionally during investigation her ossification test was not conducted and in fact,

victim was major girl aged about more than 18 years and even appearance wise she looked like major girl.

7. He further submitted that it is a case of love affair and applicant is not having any criminal history and he is in jail since 21.06.2022 i.e. for almost one and half years.

8. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

10. However, from the school record, it appears that victim was aged about 17 years but during investigation, her ossification test was not conducted.

11. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she herself had gone alongwith the applicant and also performed marriage with him, therefore, it appears to be a case of love affair.

12. The object of POCSO Act is to protect the child from sexual abuse and not to punish the accused for consensual relationship.

13. In my considered view, after ignoring the statement of the victim recorded during investigation, it is not proper to reject the bail application of the accused in such matters.

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

15. Further, applicant is not having any criminal history and he is in jail since 21.06.2022 i.e. for almost one and half years.

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- **Jaljit Singh @ Gurjeet Singh** 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 :- 23.11.2023

KK Patel