

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48612 of 2023

Applicant :- Natur @ Mitthu

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

Counsel for Applicant :- Anurag Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Amarnath Vishwakarma, learned brief holder for the State apprised the Court that on 02.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Anurag Tripathi, learned counsel for the applicant and Sri Amarnath Vishwakarma, learned brief holder for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 54 of 2023, under Sections 376, 323, 504, 506 IPC & 3/4 POCSO Act, Police Station- Jathan Bazar, District- Kushinagar, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 19.03.2023 under Section 376, 323, 504 IPC and according to the FIR, on 12.03.2023 applicant after entering in the house of the applicant made physical relationship with her on the point of knife.
5. Learned counsel for the applicant submitted that on the basis of false allegation, applicant has been made accused in the present matter and as per the allegation, applicant committed rape on the point of knife on 12.03.2023 but FIR was lodged on 19.03.2023 and this delay of about seven days shows that FIR is based on false facts.
6. He further submitted that in the FIR and in her both the statements recorded during investigation, victim disclosed her age as 20 years and as per the ossification test report, radiological age of the victim was more than 18 years but during investigation, Investigation Officer procured school record of the victim of

Class-I and as per it, at the time of incident, she was sixteen and half years' old and thereafter Section 3/4 POCSO Act was added.

7. He further submitted that even story narrated by the victim appears to be quite improbable and no reliance can be placed on such version. He further submitted that actually applicant and victim were having consensual relationship but subsequently this fact was revealed to the mother of the victim and then FIR of the present case was lodged.

8. He further submitted that applicant is not having any criminal history and he is in jail since 13.07.2023.

9. Per contra, learned AGA opposed the prayer for bail and submitted that from the statements of the victim, it appears that applicant forcibly committed rape with her but could not dispute the fact that as per the ossification test report, radiological age of the victim was more than 18 years and even as per the victim herself, she was 20 years' old at the time of incident.

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

11. However, it appears that during investigation, school record of the victim of Class-I was procured by the Investigating Officer and according to it, at the time of incident, she was sixteen and half years' old but in the FIR as well as in her both the statements recorded during investigation, victim herself disclosed her aged as 20 years and as per the ossification test report, radiological age of the victim was more than 18 years, therefore, at this stage, it cannot be said that at the time of incident, she was minor.

12. Further, story narrated by the victim does not inspire any confidence and FIR of the present case was lodged after seven days. Further, applicant is not having any criminal history and he is in jail since July, 2023.

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

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

15. Let the applicant- **Natur @ Mitthu** 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.

16. 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.

17. 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