

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47659 of 2023

Applicant :- Mohit

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

Counsel for Applicant :- Manish Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Power has been filed by Sri Rajan Babu, learned Advocate on behalf of the informant, which is taken on record.
2. Supplementary affidavit filed today on behalf of the applicant is taken on record.
3. Heard Sri Manish Kumar Singh, learned counsel for the applicant, Sri Praveen Kumar Goswami, learned Advocate, holding brief of Sri Rajan Babu, learned counsel for the informant and Sri Kunwar Tejendra Bahadur, learned AGA, 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.229 of 2023, under Sections 363, 366 and 376 (3) IPC and Section 3/4 POCSO Act, Police Station Mirzamurad, District Varanasi during pendency of the trial.
5. FIR of the present case was lodged against the applicant under Sections 363 and 366 IPC and according to the FIR, applicant enticed away the daughter of the informant aged about 15 years.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually victim and applicant both were having love affair and victim herself had gone along with applicant and also performed

marriage with him and these facts are evident from her both the statements recorded under Sections 161 and 164 Cr.P.C.

7. He further submits that however as per school record the age of the victim was about 16 years but during investigation her ossification test was not conducted.

8. He further submits that actually victim is major aged about 18 years and her wrong date of birth has been mentioned by her parents in school record.

9. He further submits that even appearance wise she looks like major.

10. He further submits that it is a case of love affair and it is not possible for a boy to ascertain the age of the girl before indulge in love with her.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 21.9.2023.

12. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record at the time of incident victim was hardly 15 years 8 months old but both the learned counsels could not dispute the fact that during investigation her ossification test was not conducted and in her both the statements recorded under Sections 161 and 164 Cr.P.C. she stated that she herself had gone with the applicant and also performed marriage with him.

13. Further, both the learned counsels could not dispute the fact that it appears to be a case of love affair and applicant is also a

young boy aged about 20-21 years old.

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

15. However, from the school record it appears that at the time of incident victim, i.e., daughter of the informant was about 15 years 9 months old but during investigation her ossification test was not conducted.

16. Further, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C., did not make any allegation against the applicant and categorically stated that she herself had gone along with applicant and had also performed marriage with him.

17. Prima facie it appears to be a case of love affair and this Court finds force in the argument advanced by the learned counsel for the applicant that it is not possible for a boy before making love with a girl to ascertain her age first.

18. Further, legislative intent behind the POCSO Act was to protect a child from sexual abuse and not to punish an accused for love affair.

19. In my considered view, by ignoring the statements of the victim recorded during investigation it is not proper to reject the bail application of an accused.

20. Law is settled that bail application should not be dismissed either for punitive or preventive purposes.

21. Further, applicant is not having any previous criminal history and in the present matter he is in jail since September, 2023.

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

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

24. Let the applicant-**Mohit** 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.

25. 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.

26. 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 :- 24.11.2023

SKM