

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48174 of 2023

Applicant :- Shubham Yadav

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

Counsel for Applicant :- Brijesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent apprise the Court that on 02.11.2023, notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri Brijesh Kumar Mishra, learned counsel for the applicant and Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.683 of 2023, under Sections 363, 376, 120-B IPC & Sections 3/4 POCSO Act, 2012, Police Station Kotwali Deoria, District Deoria, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 12.08.2023 against applicant and one another and according to the FIR, applicant and co-accused enticed away the minor daughter of the informant aged about 16 years on 11.08.2023 at about 08:00 p.m. in the night and after detaining her whole night dropped her at about 03:00 a.m.

5. Learned counsel for the applicant submits that entire allegation made against applicant is totally false and baseless and due to village rivalry, he has been made accused in the present matter. He further submits that however victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant committed rape with her but story narrated by the victim does not appear to be convincing and there are material contradictions in both the statements of the victim.

6. He further submits that as per Ossification Test Report, victim was around eighteen years old, however, according to her school record, she was sixteen years old and therefore, at this stage, it cannot be said that victim was below eighteen years old at the time of incident.

7. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 14.08.2023 i.e. for more than three months, therefore, he may be released on bail.

8. Per contra, learned AGA opposed the prayer for bail and submits that as per school record, victim was sixteen years old and applicant and co-accused enticed her away and committed rape with her and defence taken by the applicant in paragraph no.8 of the bail application appears to be vague and on the basis of such defence, the statements of the victim cannot be disbelieved at this stage.

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

10. However, as per the doctor, radiological age of the victim was around eighteen years but according to her school record, she was about sixteen years old at the time of incident and in her both the statements recorded under Sections 161 and 164 Cr.P.C., she made allegation of rape against the applicant. Applicant in the instant bail application has not taken a plea that he was having love affair with the victim rather he has taken a defence in paragraph no.8 of the affidavit that due to village rivalry, he has been made accused in the present matter. The defence taken by the applicant appears to be vague and general in nature and I find force in the argument advanced by learned A.G.A. that on the basis of such vague defence, the statements of the victim cannot be disbelieved at this stage.

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

12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application filed by the applicant- **Shubham Yadav** is **rejected**.

13. 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

Zafar