

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48400 of 2023

Applicant :- Abhijeet Vishwakarma

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

Counsel for Applicant :- Matiur Rehman Khan, Farhan Khan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Amar Kant Vishwakarma, learned Brief Holder, 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. Supplementary affidavit filed today on behalf of the applicant is taken on record.
4. Heard Sri M.R.Khan, learned counsel for the applicant and Sri Amar Jeet Vishwakarma, learned Brief Holder, for the State.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.338 of 2023, under Sections 363, 376 and 506 IPC and Section 3/4 POCSO Act, Police Station Ahirauli Bazar, District Kushinagar during pendency of the trial.
6. FIR of the present case was lodged against the applicant and one another and according to the FIR, applicant along with other co-accused persons enticed away the daughter of the informant aged about 15 years. It is further mentioned in the FIR that victim has also taken a mobile and two golden chain from the house.
7. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and victim

in her statement under Section 161 Cr.P.C. did not make any allegation against the applicant and stated that she herself had left her paternal home and thereafter when she was returning home then Police intercepted her and nobody enticed her but when her statement under Section 164 Cr.P.C. was recorded then she changed her earlier version and stated that she loved the applicant and she herself had gone along with applicant.

8. He further submits that there are material contradictions in both the statements of the victim recorded during investigation.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 16.3.2023, i.e., for the last more than six months.

10. Per contra, learned Brief Holder, for the State, opposed the prayer for bail and submits that as per school record at the time of incident the victim was hardly 15 years old but he could not dispute the fact that there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

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

12. It reflects that there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and applicant is in jail in the present matter since March, 2023, i.e., for the last more than six months.

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-**Abhijeet Vishwakarma** 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.

17. 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.

18. 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 :- 29.11.2023

SKM