

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48387 of 2023

Applicant :- Rahul Alias Shivshankar Chaudhary

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

Counsel for Applicant :- Ashutosh Pandey

Counsel for Opposite Party :- G.A., Ram Mani Upadhyay, Sarvjeet Kumar

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in revised call, however, learned AGA for the State is present.
2. Heard Sri S.P. Singh, Advocate, holding brief of Sri Ashutosh Pandey, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 205 of 2023, under Sections 376(2)(N), 504, 506 IPC & 5L/6 POCSO Act, Police Station- Walterganj, District- Basti, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and his father on 31.07.2023 and according to the FIR, on 03.12.2022, applicant enticed away the daughter of the informant aged about 16 years and thereafter he left her and after that he started making physical relation with her and threatened the informant not to perform her marriage with some other person. It is further mentioned in the FIR that local police was forcibly trying to compromise the matter as applicant and his family members are affluent persons.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim and applicant both were in love and victim herself had gone alongwith the applicant on 03.12.2022 and again subsequently she had gone alongwith the applicant and both wanted to perform marriage with each other but due to intervention of the informant, their marriage could not be solemnized.

6. He further submitted that even from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., it appears that victim herself had gone along with the applicant. He further submitted that however, as per the school record of the victim, at the time of first incident, she was around 17 years' old but in fact she was a major girl aged about more than 18 years and intentionally her ossification test was not conducted during investigation. He further submitted that even appearance wise, victim looked like a major. He further submitted that applicant is also a young body aged about 22 years and he is not having any criminal history and he is in jail since 09.08.2023.

7. Per contra, learned AGA opposed the prayer for bail and submitted that victim is a minor girl aged about 17 years and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant sexually exploited her but could not dispute the fact that during investigation, ossification test of the victim was not conducted and it appears to be a case of love affair.

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

9. However, victim i.e. daughter of the informant in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant sexually exploited her and thereafter left her but even from her statements, it reflects that her father settled her marriage with some other person and even from her statements at this stage, it cannot be ruled out that it was not a case of love affair.

10. Further, even as per the school record, at the time of alleged incident, victim was of 17 years' old and during investigation, her ossification test was not conducted.

11. Further, from the perusal of the record, it appears that defence taken by the applicant in the instant bail application, cannot be completely ruled out.

12. Further, law is settled that bail applicant should not be dismissed either for punitive or for preventive purposes.

13. Further, applicant is not having any criminal history and he is in jail since 09.08.2023.

14. Therefore, considering the facts and circumstances of the case

discussed above, in my view applicant is entitled to be released on bail.

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

16. Let the applicant- **Rahul Alias Shivshankar Chaudhary** 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 :- 28.11.2023

KK Patel