

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57401 of 2022

Applicant :- Haider @ Golu

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

Counsel for Applicant :- Chandrachud Pandey, Ashutosh Kumar Pandey, Vineeta Pandey

Counsel for Opposite Party :- G.A., Dharendra Kumar Srivastava

Hon'ble Sameer Jain, J.

1. Case called out in revised list. None present on behalf of the informant. However, learned AGA for the State is present.
2. Heard Sri Ashutosh Kumar Pandey, learned counsel for the applicant and Sri Brijesh Pratap Singh, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 90 of 2022, under Sections 363, 366, 376(3) IPC, Section 3/4 POCSO Act and Section 3(2)(V) SC/ST Act, Police Station Chandauli, District Chandauli during pendency of the trial.
4. FIR of the present case was lodged on 13.05.2022 against applicant and others and according to the FIR applicant enticed away the daughter of the informant aged about 16 years with the help of other accused persons.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and actually victim and applicant loved each other and this fact is evident from the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. He further submits that even from both the statements of the victim, it appears that she according to her own wish had gone along with applicant and in her statement recorded under Section 161 Cr.P.C. she stated that she had already performed marriage with the applicant in a temple.
6. He further submits that as per school record victim was 16 years

old but in fact she is major girl aged about 18 years and appearance wise victim looks like a major girl. He further submits that as per doctor her radiological age was found 16-17 years old, therefore, at this stage, it cannot be said that she was not more than 18 years.

7. He further submits that it is a case of love affair and applicant is not having any criminal history and in the present matter he is in jail since 12.08.2022 i.e. for more than a year.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

10. However, from the school record of the victim, it appears that she was around 16 years old and according to CMO concerned her radiological age was about 16-17 years but she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she loved the applicant and she herself had gone along with applicant and in the statement recorded under Section 161 Cr.P.C. she categorically stated that she had already performed marriage with the applicant in a temple and from her both the statements it appears that it is a case of love affair.

11. The object behind POCSO Act is to protect the child from sexual abuse and not to punish the accused for love. In my view, by ignoring the statements of the girl (victim) recorded during investigation, it is not proper to reject the bail application of an accused.

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

13. Further, applicant is not having any criminal history and in the present matter he is in jail since 12.08.2022 i.e. for more than a year.

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 - **Haider @ Golu** 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 :- 20.11.2023

AK Pandey