

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48029 of 2023

Applicant :- Adivurrahaman

Opposite Party :- State of U.P. and Others

Counsel for Applicant :- Manish Kumar Kashyap, V.P. Singh Kashyap

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri V.P. Singh Kashyap, learned counsel for the applicant, Sri Mohd. Afza, learned counsel for the informant as well as Sri Arun Kumar Mishra, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 292 of 2023, U/S 363, 366 IPC and 11/12 POCSO Act, Police Station Ganjdundwara, District Kasganj, during the pendency of trial.
4. As per prosecution story, the applicant alongwith co-accused persons is stated to have enticed away the minor daughter of the informant on 21.9.2023 at about 7.30 pm.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. It is next stated that the victim is the consenting party. To buttress his arguments, learned counsel has placed reliance on the statement of the victim recorded u/s 164 Cr.P.C., whereby she has stated that she was in love with the applicant for 5-6 months and that she had gone out of her own sweet will. She has further stated therein that she does not want to pursue the matter. Learned counsel has stated the present case seems to be misuse of the POCSO Act.
6. Learned counsel for the applicant has further stated that as per ossification test report, her age is 15 to 16 years and a leverage of two years may be granted to the applicant on the upper side. Learned counsel has placed much reliance upon the judgement of Apex Court passed in *Jaya Mala Vs. State of J & K*, (1982) 2 SCC 538 and *Mohd. Imran Khan vs. State (Govt. of NCT of Delhi)*, (2011) 10 SCC 192, whereby it has been opined

that the radiologist cannot be predict the correct date of birth rather there is a long margin of 1 to 2 years on either side.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 4.10.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Learned A.G.A. and learned counsel for the informant have vehemently opposed the bail application but has not disputed the fact that there is no criminal history of the applicant.

9. Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

10. Let the applicant- **Adivurrahman**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 21.11.2023\Shalini