

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49443 of 2023

Applicant :- Dharmendra @ Veeru

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

Counsel for Applicant :- Kalp Dev Mishra, Gyan Prakash Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Pradeep Kumar, learned AGA for the State apprised the Court that on 06.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Kalp Dev Mishra, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 182 of 2023, under Sections 363, 366, 376 IPC & 5/6 POCSO Act, Police Station- Soron, District- Kasganj, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and two others and according to the FIR, applicant enticed away the daughter of the informant aged about 14 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 baseless and actually victim i.e. daughter of the informant is major girl aged about more than 18 years and she herself had gone along with the applicant and also performed marriage with him.
6. He further submitted that in the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C., victim disclosed her age as 19/20 years and categorically stated that she herself had gone along with the applicant and also performed marriage with him. He further submitted that however, as per the school record, age of the victim was around 14 years but it appears that her parents disclosed her wrong date of birth in the school record as even according to the doctor, radiological age of the victim is 18 years.

7. He further submitted that it is a case of love affair and victim still wants to live with the applicant.

8. He further submitted that applicant is not having any criminal history and he is in jail since 30.08.2023.

9. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record, age of the victim was 14 years but could not dispute the fact that as per the ossification test report, victim was around 18 years' old and in her both the statements recorded during investigation, she did not state anything against the applicant and categorically stated that she herself had gone alongwith the applicant and also performed marriage with him.

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

11. However, as per the school record, victim appears to be about 14 years' old but according to the ossification test report, her radiological age was about 18 years, therefore, defence taken by the applicant that her parents has mentioned wrong date of birth in her school record, cannot be completely brushed aside at this stage.

12. Further, victim in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not make any allegation against the applicant and stated that she herself had gone alongwith the applicant and also performed marriage with him.

13. Law is settled that bail applicant should not be dismissed either for punitive or for preventive purposes.

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- **Dharmendra @ Veeru** 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 :- 21.11.2023

KK Patel