

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48576 of 2023

Applicant :- Pradeep

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

Counsel for Applicant :- Kanjaanan Pyare Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Pradeep Kumar, learned AGA for the State apprised the Court that on 07.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Rakesh Kumar Mishra, Advocate, holding brief of Sri Kanjaanan Pyare Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 140 of 2022, under Sections 363, 376 IPC & 3/4 POCSO Act, Police Station- Loni Border, District- Ghaziabad, during pendency of the trial in the court below.
5. FIR of the present case was lodged against applicant and three others and according to the FIR, on 05.03.2023 applicant enticed away the daughter of the informant aged about 16 years.
6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim is major girl and she herself had gone alongwith the applicant.
7. He further submitted that as per the school record, victim was around 16 years' old but in fact she is major and appearance wise also she looked like major. He further submitted that intentionally during investigation, ossification test of the victim could not be conducted.

8. He further submitted that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that with her consent, physical relationship was developed between her and applicant and she appears to be consenting party.

9. He further submitted that however, FIR of the present case was lodged in March, 2022 but for his livelihood, applicant had to go to Delhi and when he returned to his native place then police arrested him and applicant was not having any intention either to avoid the Court proceeding or to abscond.

10. He further submitted that applicant is not having any criminal history and he is in jail since 28.02.2023 i.e. for last almost 10 months.

11. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record, victim was about 16 years' old, therefore, even if from her statements recorded during investigation, it was reflected that she was consenting party, applicant cannot get any benefit.

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

13. However, from the record, it reflects that applicant was arrested in the present matter after about 11 months but in the supplementary affidavit, applicant stated that he had gone to Delhi for his livelihood and considering the statements of the victim recorded during investigation, his defence cannot be ruled out at this stage, so far as delay with regard to his appearance before the Court is concerned.

14. Further, however, victim appears to be aged about 16 years' old as per the school record but from her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., it reflects that she had gone alongwith the applicant to Muradabad and stayed with him, therefore, at this stage it cannot be said that she was not consenting party. Further, during investigation, ossification test of the victim was not conducted.

15. Law is settled, bail application should not be dismissed either for punitive or for preventive purposes.

16. Further, applicant is not having any criminal history and he is in jail for last almost 10 months.

17. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

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

19. Let the applicant- **Pradeep** 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.

20. 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.

21. 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 :- 11.12.2023

KK Patel