

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48762 of 2023

Applicant :- Sameer @ Naseem

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

Counsel for Applicant :- Raj Karan Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Pradeep Kumar, learned AGA for the State apprised the Court that as informant of the case about three years before has left his house, therefore, notice could not be served upon him. He further submits that as whereabouts of the informant could not be traced, therefore, it is not possible to serve notice of the instant bail application to him.

2. In view of the peculiar facts and circumstances of the case, the instant bail application is being heard and is being decided with the assistance of learned AGA and learned counsel appearing on behalf of High Court Legal Services Committee.

3. Heard Sri Raj Karan Yadav, learned counsel for the applicant, Sri Ved Mani Tiwari, learned counsel appearing for High Court Legal Services Committee and Sri Pradeep Kumar, learned AGA for the State.

4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 789 of 2018, under Sections 363, 366, 376, 506 IPC and Section 6 POCSO Act, Police Station Kotwali Nagar, District Banda during pendency of the trial.

5. FIR of the present case was lodged on 30.11.2018 against applicant and eight others and according to the FIR applicant and other accused persons enticed away the daughter of the informant aged about 16 years and concealed her in some place.

6. 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 was major girl and at the time of incident she was 18 years old and she herself

had gone along with the applicant and also performed marriage with him and all these facts are evident from the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

7. He further submits that victim is an illiterate girl and according to CMO her radiological age was around 18 years. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 17.01.2021 i.e. for last almost three years.

8. Per contra, learned AGA as well as learned counsel appearing on behalf of High Court Legal Services Committed 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. Considering the fact that apart from the ossification test report there is no other material on record with regard to age of the victim and as per ossification test report she is around 18 years old and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that she had gone along with the applicant and also performed marriage with him and applicant in the present matter is in jail for last almost three years, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant - **Sameer @ Naseem** 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.

13. 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.

14. 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 :- 23.11.2023

AK Pandey