

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49045 of 2023

Applicant :- Aman Paswan

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

Counsel for Applicant :- Manish Gupta

Counsel for Opposite Party :- G.A.,Rakesh Yadav

Hon'ble Sameer Jain,J.

1. Heard Sri Prateek Kumar, learned Advocate, holding brief of Sri Manish Gupta, learned counsel for the applicant, Sri Rakesh Yadav, learned counsel for the informant and Dr.S.B.Maurya, learned AGA-I, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.0031 of 2021, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Badahalganj, District Gorakhpur during pendency of the trial.
3. FIR of the present case was lodged on 4.2.2021 against the applicant and his parents and according to the FIR, applicant enticed away the daughter of the informant on 2.2.2021.
4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and this fact is evident from both the statements of victim recorded under Sections 161 and 164 Cr.P.C.
5. He further submits that the victim in her statement recorded during investigation categorically stated that she herself had gone from her house and thereafter she had performed marriage with applicant and she also disclosed her age as 18 years.

6. He further submits that even as per the High School record of the victim, her age at the time of incident was 17 years 10 months and as per ossification test report of the victim she was around 19 years old and, therefore, it appears that she was major.

7. He further submits that however from the perusal of the charge sheet it appears that charge sheet was filed against the applicant on 20.1.2022 but applicant was not aware about this fact and he already filed application to avail remedy under Section 438 Cr.P.C. and this Court on 8.3.2022 released the applicant on anticipatory bail till the submission of police report under Section 173(3) Cr.P.C. and, therefore, due to this reason in the charge sheet it has been mentioned that process under Section 83 Cr.P.C. was issued when he failed to appear but in fact applicant was not absconder as he was availing legal remedy available to him.

8. He further submits that even applicant could not become aware about the filing of charge sheet as it had already been filed even before the order passed under Section 438 Cr.P.C. by this Court.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 9.10.2023.

10. He further submits that victim is major and she had already performed marriage with applicant and she wants to live with him, therefore, applicant may be enlarged on bail.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case of the year 2021 and applicant could only be arrested in the present matter on 9.10.2023 and this fact clearly suggests that he

was absconder.

12. However, both the learned counsels could not dispute the fact that victim of the present case was around 18 years of age even as per school record and she did not state anything against the applicant in her both the statements recorded under Sections 161 and 164 Cr.P.C.

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

14. However, from the record it reflects that FIR of the present case was lodged on 4.2.2021 and applicant could only be arrested on 9.10.2023 but from the statements of the victim recorded under Sections 161 and 164 Cr.P.C. it appears that victim was about 18 years old and she had gone to Bombay and also called the applicant there and thereafter both performed marriage and her statement shows that after marriage applicant and victim started living as husband and wife and thereafter applicant applied for anticipatory bail under Section 438 Cr.P.C. which was allowed by this Court on 8.3.2022 but in the meantime in January, 2022 charge sheet against the applicant was filed and as till date applicant could not get the anticipatory bail order in his favour, he could not appear before Investigating Officer, therefore, before filing the charge sheet it appears that Investigating Officer filed an application for obtaining process under Sections 82 and 83 Cr.P.C. and thereafter charge sheet was filed.

15. Be that as it may, considering the fact that victim even at the time of incident appears to be major and she had already performed marriage and she also shown her desire in her statements under Sections 161 and 164 Cr.P.C. to live with

applicant, in my view, applicant is entitled to be released on bail.

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

17. Let the applicant-**Aman Paswan** 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.

18. 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.

19. 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 :- 30.11.2023
SKM