

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48911 of 2023

Applicant :- Ajay

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

Counsel for Applicant :- Pramod Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Dr. S.B.Maurya, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 8.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Pramod Kumar, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State,
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.375 of 2022, under Sections 363, 366, 376 and 506 IPC and Section 3/4 POCSO Act, Police Station Phaphund, District Auraiya during pendency of the trial.
5. FIR of the present case was lodged on 29.12.2022 against the applicant and one Arif Khan and according to the FIR, nominated accused Arif Khan enticed away the daughter of the informant aged about 15 years. It is further mentioned in the FIR that the victim has also taken Rs.15,000/- and jewellery along with her.
6. Learned counsel for the applicant submits that applicant was not named in the FIR and when after six months victim was recovered and her statements were recorded then applicant was

made accused in the present matter.

7. He further submits that from the statements of the victim recorded under Sections 161 and 164 Cr.P.C. it reflects that mother of applicant purchased the victim from co-accused Arif Khan and thereafter her marriage was performed with the applicant against her wishes but it appears that after recovery under the pressure of local police and her parents she gave false statement. He further submits, actually when nominated accused Arif Khan after sexually exploiting her left her on the Railway Platform, then applicant met her and thereafter victim started living with the applicant.

8. He further submits that even victim at present is residing in the house of applicant and averment in this regard has been made in paragraph-16 to the affidavit filed in support of the instant bail applicant.

9. He further submits that as per progress report of Class-VIII of the victim at the time of incident she was 13 and 1/2 years old and according to her ossification test she was about 18 years old and this fact clearly suggests that wrong date of birth of the victim has been mentioned in her school record.

10. He further submits that even date of birth mentioned in the progress report of Class-VIII of the victim is not admissible as per provisions of Juvenile Justice Act and therefore, only reliable document with regard to her age is her ossification test report.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 25.6.2023.

12. Per contra, learned AGA opposed the prayer for bail and submits that the age of the victim as per school record was about 13 and 1/2 years at the time of incident and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant forcibly performed marriage with her but the learned AGA could not dispute the fact that as per ossification test report of the victim her age at the time of incident was around 18 years and except progress report of Class-VIII of the victim there is no other school document of the victim on record with regard to her age.

13. Learned AGA further could not controvert the averment made by applicant in paragraph-16 to the affidavit filed in support of the instant bail application that victim at present is residing in the house of the applicant.

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

15. However, from the progress report of Class-VIII of the victim it appears that at the time of incident she was around 13 and 1/2 years old and she in her statements recorded under Sections 161 and 164 Cr.P.C. made allegation that mother of the applicant after purchasing her from co-accused Arif Khan solemnized her marriage with the applicant against her wishes and thereafter applicant made physical relationship with her against her wishes but as per ossification test report of the victim, she was around 18 years old and except the progress report of Class-VIII of the victim there is no other document of her school record with regard to her age and therefore, this Court finds force in the argument advanced by the learned counsel for the applicant that as per Section 94 of Juvenile Justice Act the age of the victim at this stage merely on

the basis of her progress report of Class-VIII cannot be ascertained as 13 and 1/2 years old.

16. Further, in paragraph-16 to the affidavit filed in support of the instant bail application applicant categorically stated that at present victim is even residing in the house of applicant and this fact could not be controverted by learned AGA and, therefore, the defence taken by applicant that when co-accused Arif Khan left the victim at Railway Platform then she met with applicant and thereafter started living with him in his house, cannot be completely brushed aside at this stage.

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since June, 2023.

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

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

20. Let the applicant-**Ajay** 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.

21. 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.

22. 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 :- 29.11.2023
SKM