

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49915 of 2023

Applicant :- Karan Singh

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

Counsel for Applicant :- Sanjeev Kumar Khare

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Ravi Kant Kushwaha, learned A.G.A. for the State-respondent apprise the Court that on 08.11.2023, notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri Sanjeev Kumar Khare, learned counsel for the applicant and Shri Ravi Kant Kushwaha, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.74 of 2023, under Sections 363, 366, 342, 376(2N), 120-B IPC & Sections 5/6 POCSO Act, 2012, Police Station Mahobkanth, District Mahoba, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 26.05.2023 against applicant and two others, under Section 363 I.P.C. and according to the FIR, applicant and other accused persons enticed away the minor daughter of the informant aged about 15 years.

5. Learned counsel for the applicant submits that F.I.R. of the

present case was lodged after two weeks on the basis of false allegation.

6. He next submits that entire allegation made against applicant is totally false and baseless and actually victim herself had gone alongwith with the applicant and this fact is evident from her statement recorded under Section 161 Cr.P.C. but subsequently when her statement under Section 164 Cr.P.C. was recorded then she completely changed her earlier version and stated that applicant abducted her and committed rape with her.

7. He further submits that there are material contradictions in both the statements of the victim and this fact clearly suggests that victim is not a reliable witness and applicant has been falsely implicated in the present matter.

8. He further submits that however, as per school record, the age of the victim was about fifteen years at the time of incident but during investigation her Ossification Test was not conducted and in fact she is a major girl aged about eighteen years and even appearance wise she looked like eighteen years old girl.

9. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 03.06.2023 i.e. for more than five months, therefore, he may be released on bail.

10. Per contra, learned AGA opposed the prayer for bail and submits that as per school record, victim is hardly fifteen years old girl and she categorically stated in her statement

under Section 164 Cr.P.C. that applicant abducted her and committed rape with her but could not dispute the fact that earlier when her statement was recorded under Section 161 Cr.P.C., she did not make any allegation of rape and stated that she herself had gone alongwith with the applicant.

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

12. However, as per school record of the victim, she was about fifteen years old girl at the time of incident but during investigation her Ossification Test was not conducted.

13. Further, however the victim in her statement recorded under Section 164 Cr.P.C. made allegations of abduction and commission of rape but no such allegation was levelled by her in her earlier statement recorded under Section 161 Cr.P.C. In her statement recorded under Section 161 Cr.P.C., she stated that she herself had gone alongwith with the applicant. Therefore, there are material contradictions in both the statements of the victim.

14. Further, applicant is not having any criminal history and he is in jail in the present matter since 03.06.2023 i.e. for more than five months.

15. Therefore, considering the facts and circumstances of the case, discussed above, 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 filed by the

applicant is **allowed**.

17. Let the applicant- **Karan Singh**, 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 :- 22.11.2023

Zafar