

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49294 of 2023

Applicant :- Vishu Yadav @ Krishn Murari

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

Counsel for Applicant :- Madan Ji Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 20.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Madan Ji Pandey, learned counsel for the applicant and Sri Imran Khan, learned AGA, 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.0574 of 2022, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Shahpur, District Gorakhpur during pendency of the trial.
5. FIR of the present case was lodged against the applicant under Sections 363 and 366 IPC and according to the FIR, applicant enticed away the daughter of the informant aged about 16 years.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually victim herself had gone along with the applicant and this fact is evident from her both the statements recorded under Sections 161 and 164 Cr.P.C.
7. He further submits that victim in her statement under Section

161 Cr.P.C. did not make any allegation of either rape or making physical relationship against the applicant but when her statement under Section 164 Cr.P.C. was recorded then she stated that with her consent physical relationship were developed between both of them.

8. He further submits that however as per school record at the time of incident victim was around 13 and 1/2 years old but according to CMO concerned, radiological age of the victim was around 17 years, therefore, it appears that her parents disclosed her wrong date of birth in her school record.

9. He further submits that victim in fact is major girl aged about 18 years and even appearance wise she looks like major girl.

10. He further submits that it is a case of love affair and applicant is not having previous criminal history and in the present matter he is in jail since 27.8.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim is hardly 13 and 1/2 years old and, therefore, her consent is immaterial but he could not dispute the fact that as per CMO concerned the age of the victim was about 17 years.

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

13. However, according to school record of the victim at the time of incident she was about 13 and 1/2 years old but according to the CMO concerned, at the time of incident she was around 17 years old and, therefore, there are material contradictions in both the age of the victim based on her school record and her ossification test report.

14. Further, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. did not make any allegation against the applicant and categorically stated that she herself had gone along with the applicant.

15. Further, victim in her statement recorded under Section 161 Cr.P.C. did not make any allegation of rape against the applicant. However, in the statement under Section 164 Cr.P.C. she stated that with her consent physical relationship were developed between both of them.

16. Further, from the perusal of the record it appears to be a case of love affair.

17. The object behind the POCSO Act is to protect a child from sexual abuse and not to punish the accused for love affair.

18. Further, in my considered view, in cases like present one by ignoring the statements of the victim recorded during investigation, it is not proper to reject the bail applicant of an accused.

19. Further, law is settled that bail application should not be dismissed either for punitive or preventive purposes.

20. Further, applicant is not having any previous criminal history to his credit and in the present matter he is in jail since 27.8.2023.

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

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

23. Let the applicant-**Vishu Yadav @ Krishn Murari** 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.

24. 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.

25. 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 :- 1.12.2023

SKM