

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48977 of 2023

Applicant :- Shahveiz

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

Counsel for Applicant :- Vinod Kumar Tirpathi, Amit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Kunwar Tejendra Bahadur, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 15.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Vinod Kumar Tripathi, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur 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.351 of 2023, under Section 376 IPC and Section 3/4 POCSO Act, Police Station Sector-49, District G.B.Nagar, District Ghazipur during pendency of the trial.
5. FIR of the present case was lodged against the applicant and others and according to the FIR, applicant committed rape with 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 and applicant both were good friends but unfortunately their relationship became strained and in the meantime, informant

came to know about their friendship and thereafter, FIR of the present case was lodged.

7. He further submits that however, victim of the case as per school record is about 16 years old but she is major and during investigation her ossification test was not conducted.

8. He further submits that even the victim in her both the statements recorded during investigation admitted the fact of friendship and it also appears that earlier physical relationship were developed with her consent.

9. He further submits that applicant is also a young boy aged about 19 years and this fact is even evident from the statement of the victim recorded under Section 164 Cr.P.C.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 7.9.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that victim is below 17 years old girl according to her school record and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant committed rape upon her but he could not dispute the fact that even from the perusal of her both the statements recorded during investigation it appears that she was having friendship with the applicant and earlier physical relationship were developed between both of them with her consent and subsequently some dispute arose between both of them.

12. Learned AGA further could not dispute the fact that during investigation ossification test of the victim was not conducted and

according to the school record victim was about 17 years old.

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

14. However, as per school record of the victim at the time of incident she was 16 years 10 months old but during investigation her ossification test was not conducted.

15. Further, from both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. it reflects that she was having friendship with the applicant and she disclosed the age of applicant 18-19 years and subsequently some dispute arose between both of them.

16. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 7.9.2023.

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

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

19. Let the applicant-**Shahveiz** 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.

20. 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.

21. 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 :- 4.12.2023
SKM