

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 49586 of 2023

**Applicant :-** Rahul Kumar

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

**Counsel for Applicant :-** Kamal Singh, Ram Charan Lal

**Counsel for Opposite Party :-** G.A., Surya Bhan Dubey

**Hon'ble Sameer Jain, J.**

1. Heard Sri Kamal Singh, learned counsel for the applicant, Surya Bhan Dubey, 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.379 of 2023, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Bhojipura, District Bareilly during pendency of the trial.

3. FIR of the present case was lodged against the applicant and two others and according to the FIR, applicant enticed away the daughter of the informant aged about 16-1/2 years with the help of other two accused persons.

4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually victim is major aged about 18 years and she herself had gone along with applicant and applicant never made any physical relationship with her and this fact is evident from her statement recorded under Sections 161 Cr.P.C.

5. He further submits that however, subsequently when the statement of the victim was recorded under Section 164 Cr.P.C. then she however, stated that she had gone along with applicant

but she also stated that applicant forcibly committed rape upon her.

6. He further submits that there are material contradictions in both the statements of the victim and even from the perusal of the statement of the victim recorded under Section 164 Cr.P.C. her consent is apparent.

7. He further submits that however, as per school record of the victim, she was around 16-1/2 years old at the time of incident but in fact she is major and this fact is even evident from her statement recorded under Section 161 Cr.P.C.

8. He further submits that even appearance wise victim looks like major.

9. He further submits that intentionally during investigation ossification test of the victim was not conducted.

10. He further submits that it is a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 5 .7.2023.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record of the victim, she was about 16-1/2 years old and she in her statement under Section 164 Cr.P.C. stated that applicant committed rape upon her but both the learned counsel could not dispute the fact that during investigation ossification test of the victim was not conducted and victim in her statement under Section 161 Cr.P.C. stated that she is major aged about 18 years and she did not make any allegation of rape against the applicant in her statement under Section 161 Cr.P.C.

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

13. However, from the school record it reflects that the age of victim at the time of incident was about 16-1/2 years and she in her statement under Section 164 Cr.P.C. stated that applicant committed rape upon her but during investigation her ossification test was not conducted and victim in her statement under Section 161 Cr.P.C. categorically stated that she herself had gone along with applicant as she wanted to perform marriage with him and also stated that applicant did not commit rape upon her.

14. Further, victim in her statement under Section 161 Cr.P.C. also disclosed her age as 18 years and stated that she is major and, therefore, there are material contradictions in her both the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

15. Further, even from the statement of the victim recorded under Section 164 Cr.P.C. it appears that she had gone along with applicant upto the State of Gujarat and therefore, argument advanced by learned counsel for the applicant that even from her statement under Section 164 Cr.P.C. it appears that she herself had gone along with the applicant cannot be completely ruled out at this stage.

16. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 5.7.2023.

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-**Rahul Kumar** 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 :- 6.12.2023**  
**SKM**