

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49735 of 2023

Applicant :- Ateeq Ahmad

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

Counsel for Applicant :- Anil Kumar

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 15.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Anil Kumar, 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.131 of 2023, under Sections 363 and 376 IPC and Section 3/4 POCSO Act, Police Station Dholna, District Kasganj during pendency of the trial.
5. FIR of the present case was lodged on 14.5.2023 against the applicant and four others and according to the FIR, on 8.5.2023 applicant enticed away the daughter of the informant aged about 16 years with the help of his other family members.
6. Learned counsel for the applicant submits that entire allegation of enticement 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 his fact is evident from her statements under Sections 161 and 164 Cr.P.C.

7. He further submits that in both the statements recorded during investigation victim stated that she herself had gone along with applicant.

8. He further submits that victim in her statement under Section 164 Cr.P.C. also stated that her marriage had also performed with applicant and after marriage her parents stated to the applicant and his family members to return her but applicant and his family members refused for the same.

9. He further submits that however, as per school record victim was about 16 years old but victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that she is major and intentionally during investigation her ossification test was not conducted.

10. He further submits that appearance wise victim looks like major girl.

11. He further submits that as marriage of the victim has already performed with the applicant, therefore, now victim is legally wedded wife of applicant.

12. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 15.9.2023.

13. Per contra, learned AGA although opposed the prayer for bail but could not dispute the fact that as per statement of the victim recorded under Section 164 Cr.P.C. her parents themselves solemnized her marriage with the applicant. However, he pointed out that victim was around 16 years old at the time of incident

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

15. However, as per school record the age of the victim at the time of incident appears to be 16 years but she in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that she herself had gone along with applicant and in her statement under Section 164 Cr.P.C. she stated that when she returned back to her paternal home on the assurance that her marriage would be performed with the applicant, thereafter her marriage was solemnized with applicant but after marriage again her parents started stating that she should return back to her paternal home but their proposal was not accepted by applicant and his family members, therefore, considering the peculiar fact that her marriage with the applicant was solemnized by her parents, 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 is **allowed**.

17. Let the applicant-**Ateeq Ahmad** 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 :- 6.12.2023
SKM