

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50372 of 2023

Applicant :- Deepak Kannaujiya

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kripesh Mishra

Counsel for Opposite Party :- G.A.,Arvind Yadav

Hon'ble Sameer Jain,J.

1. Heard Sri Kripesh Mishra, learned counsel for the applicant, sri Arvind Yadav, learned counsel for the informant and Sri Imran Khan, learned AGA, 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.426 of 2023, under Sections 363, 366 and 376(2)(n) IPC and Section 5L/6 POCSO Act, Police Station Sahjanwa, District Gorakhpur during pendency of the trial.

3. FIR of the present case was lodged against the applicant and his mother and according to the FIR, applicant enticed away the daughter of the informant aged about 15 years, who was student of Class-XI.

4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and in fact victim herself had gone along with applicant and this fact is evident from her both the statements recorded under Sections 161 and 164 Cr.P.C.

5. He further submits that victim in her statement recorded under Section 164 Cr.P.C. also admitted that her marriage had already been performed with applicant but under the pressure of her parents she further stated that her marriage was performed against

her wishes.

6. He further submits that physical relationship were developed between victim and applicant with her consent.

7. He further submits that it is a case of love affair and applicant is hardly 18-19 years old young boy and he is not having any previous criminal history and in the present matter he is in jail since 4.9.2023.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record the age of the victim at the time of incident was 15 years and, therefore, her consent is immaterial but both the learned counsels could not dispute the fact that during investigation ossification test of the victim was not conducted and applicant is also a young boy aged about 18-19 years.

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

10. However, according to the school record victim was around 15 years old but she in her statement under Section 161 Cr.P.C. stated that she herself had gone along with applicant and in the statement recorded under Section 161 Cr.P.C. she did not make any allegation of rape against the applicant.

11. However, victim in her statement under Section 164 Cr.P.C. stated that she was having friendship with applicant and stated that applicant enticed her away and forcibly performed marriage with her and further stated that physical relationship were developed between applicant and her with her consent and, therefore, there are material contradictions in both the statements

of the victim.

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

13. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 4.9.2023.

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

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

16. Let the applicant-**Deepak Kannaujiya** 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.

17. 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.

18. 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