

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49738 of 2023

Applicant :- Nitin @ Bhola

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

Counsel for Applicant :- Anil Kumar Bind

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 16.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Anil Kumar Bind, 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 Sessions Trial No.1930 of 2023 in Case Crime No.219 of 2023, under Sections 363 and 376 IPC, Section 3/4 POCSO Act and Section 3(2)(5) SC/ST Act, Police Station Mandawar, District Bijnor during pendency of the trial.
5. FIR of the present case was lodged against the applicant and co-accused Pappu and according to the FIR, applicant and co-accused Pappu enticed away the twins daughters 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 this fact is evident from the statements of the victims recorded under

Sections 161 and 164 Cr.P.C.

7. He further submits that when the statement of one of the victim was recorded under Section 164 Cr.P.C. then she categorically stated that she herself had left her paternal home and applicant also told her to go back but she did not return to her home.

8. He further submits that in the statement under Section 164 Cr.P.C. victim categorically stated that no physical relationship were ever developed between her and applicant but in her statement under Section 161 Cr.P.C. on query made by Investigating Officer she stated that for the last one year several times physical relationship were developed between both of them.

9. He further submits that the sister of one of the victim also stated similar story and stated that applicant and her sister was having friendship.

10. He further submits that even as per school record the victim was more than 17 years old and during investigation her ossification test was not conducted.

11. He further submits, however applicant is having criminal history of Section 302 IPC but in that case he was implicated after the present case through the statement of co-accused, who was brother of one of the victim and in that case he has already been released on bail.

12. He further submits that applicant is in jail in the present matter since 20.7.2023.

13. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel

for the applicant.

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

15. From the school record of the victims, who were twins, it appears that they were more than 17 years old and they in their statements under Section 164 Cr.P.C. did not make any allegation of rape against the applicant.

16. However, one of the victim in her statement under Section 161 Cr.P.C. stated that since last year several times physical relationship were developed between applicant and her but from the statement of both the victims, it also reflects that they herself had left their paternal home and applicant insisted them to return back.

17. However, applicant is also having a criminal history of Section 302 IPC but criminal history of the applicant has been explained in the instant bail application and it appears that in that case he was made accused after lodgement of FIR of the present case through the statement of co-accused and in that case he is on bail.

18. Further, law is settled that bail application of an accused should not be dismissed merely on the basis of his criminal history if otherwise case of bail is made out.

19. Further, applicant in the present matter is in jail since 20.7.2023.

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

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

22. Let the applicant-**Nitin @ Bhola** 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.

23. 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.

24. 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 :- 7.12.2023
SKM