

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50515 of 2023

Applicant :- Kundan Nat

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

Counsel for Applicant :- Lalji Yadav, Yashpal Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Shatrughna Yadav, learned AGA for the State apprised the Court that on 20.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Yashpal Yadav, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 47 of 2023, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Kotwali Padrauna, District- Kushinagar, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant on 12.01.2023 under Section 363 IPC and according to the FIR, on 16.12.2022, applicant enticed away the daughter of the informant aged about 16 years. It is further mentioned in the FIR that applicant has also taken Rs. 70,000/- from the house of the informant.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and this fact is evident from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., in which she categorically stated that on her insistence, applicant had taken her and she had also performed marriage with him.
6. He further submitted that actually victim is aged about more than 18 years but her wrong date of birth has been mentioned by her parents in her school record. He further submitted that merely on the basis of an entry made in the school record of the victim of

Class-IV, at this stage, it cannot be said that she was about 16 years' old. He further submitted that intentionally during investigation, ossification test of the victim was not conducted. He further submitted that even appearance wise, victim looked like major girl aged about more than 18 years.

7. He further submitted that it is a case of love affair and applicant is not having any criminal history and he is in jail since 20.08.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record, victim was even below 16 years of age but could not dispute the fact that with regard to age of the victim, her school record of Class-IV is only available and during investigation, her ossification test was not conducted.

9. He further could not dispute the fact that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that on her insistence, applicant had taken her and she had already performed marriage with him.

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

11. However, from the record of Class-IV of the victim, it appears that she was aged about 15 years and 10 months' old at the time of incident but it is nowhere on record, which can show that what was the basis of her date of birth mentioned in Class-IV. Further, during investigation, ossification test of the victim was not conducted.

12. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that on her insistence, applicant had taken her and she had already performed marriage with him, therefore, it appears to be a case of love affair.

13. The object of POCSO Act is to protect the child from sexual abuse and not to punish an accused for love affair. In my view, by ignoring the statements of the victim recorded during investigation, it is not proper to reject the bail application of an accused.

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

15. Further, applicant is not having any criminal history and he is in jail since 20.08.2023.

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

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

18. Let the applicant- **Kundan Nat** 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.

19. 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.

20. 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 :- 28.11.2023

KK Patel