

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 50776 of 2023

**Applicant :-** Ganesh

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

**Counsel for Applicant :-** Piyush Patel, Pradeep Kumar

**Counsel for Opposite Party :-** G.A.

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

1. Sri Rajiv Dhar Dwivedi, learned A.G.A. for the State apprised the Court that notice has been served to the informant on 24.10.2023. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Pradeep Kumar, learned counsel for the applicant and Sri Rajiv Dhar Dwivedi, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 266 of 2023, under Sections 363, 366, 376, 343 IPC and 3/4 POCSO Act, Police Station Kothibhar, District Maharajganj during pendency of the trial.
4. FIR of the present case was lodged against unknown persons and according to the FIR daughter of the informant aged about 15 years had gone somewhere from her home and did not return.
5. Learned counsel for the applicant submits that applicant was not named in the FIR but during investigation when the statement of the victim was recorded under Section 161 Cr.P.C., then applicant was made accused in the present matter.
6. He further submits that however victim in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant but even from her both the statements it reflect that she was consenting party.

7. He further submits that however from the school record victim was aged about 15-1/2 years old but in fact victim is a major girl aged about 18 years and intentionally during investigation her ossification test was not conducted. He next submits that even appearance vice victim looks like major girl.

8. He further submits that it is a case of love affair and applicant is not having any previous criminal history and he is in jail since 21.7.2023.

9. Per contra, learned AGA opposed the prayer for bail and submits that according to the school record, victim was below 15-1/2 years old girl and she in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant and therefore there is no need to draw any inference that applicant and victim were having love affair. He further submits that even if they were having love affair then also considering the age of victim it hardly matters. Therefore applicant should not be released on bail.

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

11. From the record, it reflects, as per the school record of the victim, she was aged about 15-1/2 years old girl and she in her both the statements recorded under 161 Cr.P.C. and 164 Cr.P.C. categorically stated that applicant committed rape and applicant is an adult man aged about 25 years.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

13. Accordingly, the instant bail application is rejected.

**Order Date :- 28.11.2023/Aiman**