

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49597 of 2023

Applicant :- Shunny Maddheshiya

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

Counsel for Applicant :- Ayank Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Dr. S.B.Maurya, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 18.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Ayank Mishra, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, 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.91 of 2022, under Sections 363, 366 and 376 IPC, Section 5/6 POCSO Act and Section 3(2)5 and 3(2)(5A) SC/ST Act, Police Station Kaimpiyarganj, District Gorakhpur during pendency of the trial.
5. FIR of the present case was lodged against the applicant on 10.4.2022 and according to the FIR, on 7.4.2022 applicant enticed away the maternal grand daughter of the informant aged about 15 years. It is further mentioned in the FIR that she has also taken Rs.50,000/- and jewellery from her home.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually victim and applicant both loved each other and victim herself had

gone along with the applicant and both started living as husband and wife in the State of Maharashtra and victim has also performed marriage with the applicant and she also conceived with applicant and all these facts are evident from the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

7. He further submits that victim stayed along with applicant since 16.7.2023, i.e., more than one year but thereafter applicant and victim both were apprehended.

8. He further submits that victim refused to go back in her paternal home and at present she is residing in Child Reform Home.

9. He further submits that however, as per school record of the victim, she is about 15 years old at the time of incident but in fact she is major aged about 18 years and even appearance wise she looks like major.

10. He further submits that during investigation ossification test of the victim was not conducted.

11. He further submits that it is a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 18.7.2023.

12. Per contra, learned AGA opposed the prayer for bail and submits that victim was about 16 years old at the time of incident according to her school record, therefore, her consent is immaterial but he could not dispute the fact that during investigation her ossification test was not conducted and victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. did not make any allegation against the applicant and stated that she herself had gone along with the applicant.

13. Learned AGA further could not dispute the fact that victim in her statement under Section 161 Cr.P.C. also stated that she had already performed marriage with the applicant and she also conceived with the applicant.

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

15. However, from the school record it appears that at the time of incident victim was about 15 years old but during investigation her ossification test was not conducted.

16. Further, from the record it reflects that victim herself had gone along with applicant and she stayed with him as his wife upto 16.7.2023, i.e., for more than one year and further, in her statement under Section 164 Cr.P.C. she disclosed that she had already performed marriage with him and also conceived with the applicant.

17. The object behind the POCSO Act is to protect a child from sexual abuse and not to punish the accused and victim for their love affair.

18. In my view, by ignoring the statements of the victim recorded during investigation in cases like present one, the bail application of an accused should not be dismissed.

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

20. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 18.7.2023.

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

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

23. Let the applicant-**Shunny Maddheshiya** 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.

24. 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.

25. 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