

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51005 of 2023

Applicant :- Kamal Kumar Bharti

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

Counsel for Applicant :- Vijay Prakash Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Alauddin Khan, Advocate filed his power on behalf of the informant, today in the Court, which is taken on record.
2. Sri Vijay Prakash Chaturvedi, learned counsel for the applicant submits that due to mistake in prayer clause of the instant bail application, Section 3/4 POCSO Act could not be mentioned, therefore, a supplementary affidavit has been filed in this regard and he may be permitted to make necessary correction in the prayer clause of the instant bail application.
3. In view of above, learned counsel for the applicant is permitted to make necessary correction in the prayer clause of the instant bail application during the course of day itself.
4. Heard Sri Vijay Prakash Chaturvedi, learned counsel for the applicant, Sri Alauddin Khan, learned counsel for the informant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.
5. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 232 of 2023, under Sections 363, 366, 376(3) IPC and Section 3/4 POCSO Act, Police Station Soharatgarh, District Siddharth Nagar during pendency of the trial.
6. FIR of the present case was lodged on 12.07.2023 against applicant and one another and according to the FIR applicant with the help of another accused enticed away the daughter of the informant. It is further mentioned in the FIR that daughter of the

informant has also taken Rs. 1,50,000/- and jewellery along with her.

7. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and from the perusal of the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., it appears that she herself had gone along with applicant and also performed marriage with him.

8. He further submits that however as per school record victim at the time of incident was about 14 years old but according to CMO concerned her radiological age was above 18 years and this fact clearly suggests that she was more than 18 years and her parents has mentioned her wrong date of birth in the school record and no reliance can be placed on such school record.

9. He further submits that even appearance wise also victim looks like a major girl and applicant is not having any criminal history and in the present matter he is in jail since 20.08.2023.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record victim is about 14 years old, therefore, her consent is immaterial but both the counsels could not dispute the fact that according to CMO concerned her radiological age was more than 18 years.

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

12. However, as per school record, it appears that at the time of incident victim was about 14 years old but according to her ossification test report she was above 18 years old, therefore, there are material differences between both the age of the victim and argument advanced by learned counsel for the applicant that it appears that parents of the victim has mentioned her wrong date of birth in the school record cannot be ruled out at this stage.

13. Further, victim in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that she loved the applicant and she herself had gone along with the applicant and also performed marriage with him, therefore, it appears to be a case of love affair.

14. The object behind POCSO Act is to protect the child from sexual abuse and not to punish for love affair. In my view, by ignoring the statements of the girl (victim) recorded during investigation in cases like present one the bail of an accused should not be refused.

15. Further, the law is settled that bail should not be dismissed either for punitive purpose or preventive purpose.

16. Further, applicant is not having any criminal history and in the present matter he is in jail since 20.08.2023.

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

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

19. Let the applicant - **Kamal Kumar Bharti** 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.

20. 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.

21. 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 :- 29.11.2023

AK Pandey