

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50378 of 2023

Applicant :- Haseen

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

Counsel for Applicant :- Harshit Pathak, Anurag Pathak

Counsel for Opposite Party :- G.A., Dhiraj Kumar Pandey

Hon'ble Sameer Jain, J.

1. Heard Sri Harshit Pathak, learned counsel for the applicant, Sri Dhiraj Kumar Pandey, learned counsel for the informant and Sri Imran Khan, learned AGA, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.485 of 2023, under Sections 363 and 376 IPC and Section 4(2) POCSO Act, Police Station Deoband, District Saharanapur during pendency of the trial.
3. FIR of the present case was lodged against the applicant and according to the FIR, applicant has taken daughter of the informant aged about 13 years to his house and under threat committed rape upon her. It is further mentioned in the FIR that when informant informed the Police then his daughter was found in the house of applicant.
4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and however victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but even from her statement under Section 164 Cr.P.C. it reflects

that she was consenting party and it appears that when her parents found her in the house of applicant then FIR of the present case was lodged.

5. He further submits that as per the prosecutrix and the informant, prosecutrix at the time of incident was 13 years old but according to school record at the time of incident she was 15-1/2 years old and this discrepancy in the age of victim shows that her correct date of birth has neither been disclosed by the informant nor he disclosed her correct date of birth in her school record.

6. He further submits that intentionally during investigation the radiological age of the victim was not ascertained and even appearance wise she looks like major.

7. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 17.9.2023.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that even as per school record victim was hardly 15-1/2 years old and victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that applicant committed rape upon her and considering her statements there is no need to infer otherwise.

9. They further submitted that there is no reason to disbelieve the age mentioned in the school record of the victim and even applicant in entire bail application did not state that he was having love affair with the victim and when victim and applicant both caught red handed then FIR of the present case was lodged, therefore, considering the age of the victim and her statements

recorded during investigation applicant should not be released on bail.

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

11. As per the informant, victim at the time of incident was 13 years old and even victim disclosed her age in her both the statements recorded under Sections 161 and 164 Cr.P.C. as 13 years. However, as per school record at the time of incident victim was around 15-1/2 years old.

12. However, during investigation it appears that radiological age of the victim was not ascertained but she in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that applicant after taking her in his house committed rape upon her and applicant in the entire bail application did not aver that he and victim both were having love affair and when victim was found in the house of applicant then her parents lodged FIR of the present case, therefore, in the absence of such defence no inference can be drawn by this Court at this stage that victim was either in consensual relationship with the applicant or she was the consenting party.

13. Therefore, considering the facts and circumstances of the case discussed above, particularly, the age of the victim, in my view, applicant is not entitled to be released on bail at this stage.

14. Accordingly, the instant bail application is **rejected** at this stage.

15. 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 :- 12.12.2023
SKM