

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50291 of 2023

Applicant :- Pradeep Chauhan

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

Counsel for Applicant :- Dhiresk Kumar,Anil Kumar Pandey

Counsel for Opposite Party :- G.A.,Vidya Kant Mishra

Hon'ble Sameer Jain,J.

1. Heard Sri Dhiresk, learned counsel for the applicant, Sri Shailesh Kumar Tiwari, learned Advocate, holding brief of Sri Vidya Kant Mishra, 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.283 of 2023, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Maniyar, District Ballia during pendency of the trial.
3. FIR of the present case was lodged on 10.9.2023 against the applicant and according to the FIR, on 6.9.2023 applicant enticed away the daughter of the informant aged about 16 years.
4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and this fact is evident from the statements of the victim recorded under Sections 161 and 164 Cr.P.C.
5. He further submits that victim in her both the statements recorded during investigation categorically stated that she herself had gone along with the applicant and had also performed marriage with him.
6. He further submits that however, as per school record the age of the victim at the time of incident was about 16 years 9 months but

in fact she is major and intentionally during investigation her ossification test was not conducted and even appearance wise victim looks like major girl.

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 as per school record the age of the victim at the time of incident was 16 years 9 months and, therefore, her consent is immaterial but both the learned counsels could not dispute the fact that during investigation ossification test of the victim could not be conducted.

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

10. However, as per school record the age of the victim at the time of incident appears to be 16 years 9 months but during investigation her ossification test was not conducted and victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that she herself had gone along with the applicant and also performed marriage with him.

11. The instant matter appears to be a case of love affair.

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

13. 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.

14. Law is settled that bail application should not be dismissed either for punitive or preventive purposes.

15. Further, applicant is not having any previous criminal history and in the present matter he is in jail since September, 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-**Pradeep Chauhan** 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 :- 11.12.2023
SKM