

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49953 of 2023

Applicant :- Babloo

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

Counsel for Applicant :- Vijay Shantam

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 25.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Vijay Shantam, 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.336 of 2022, under Sections 363, 366 and 376 IPC, Section 3/4 POCSO Act and Section 3(ii)v SC/ST Act, Police Station Harduaganj, District Aligarh during pendency of the trial.
5. FIR of the present case was lodged against the applicant and his family members and according to the FIR, applicant enticed away the daughter of the informant aged about 16 years. It is further mentioned in the FIR that victim has also taken jewellery and Rs. 25,000/- from her home.
6. Learned counsel for the applicant submits that entire allegation of enticement made against the applicant is totally false and baseless and this fact is even evident from the statements of the

victim recorded during investigation.

7. He further submits that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. disclosed her age 20 years and stated that she herself had gone along with the applicant and also performed marriage with him.

8. He further submits that in the statement under Section 164 Cr.P.C. victim disclosed that she is illiterate girl but surprisingly during investigation Investigating Officer procured a school certificate issued by Head Mistress of Primary School Morthal dated 1.11.2022 and according to the certificate issued by Principal of the School, the date of birth of the victim is 7.7.2006 and according to it at the time of incident she was 16 years 3 months old but no reliance can be placed on such document as in the certificate Principal did not even disclose that when victim took admission in her institution and what was the basis of date of birth of the victim in the school record.

9. He further submits that during investigation ossification test of the victim was not conducted and even in the FIR it is mentioned that victim along with her also taken jewellery and Rs.25,000/- and all these facts clearly suggests that victim is major and she herself had gone along with applicant.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 18.6.2023.

11. Per contra, learned AGA although opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

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

13. However, from the school certificate of the victim which was procured by Investigating Officer during investigation victim was about 16 years 3 months old but victim in her statement under Section 164 Cr.P.C. categorically stated that she is not literate girl and, therefore, genuineness of the certificate issued by the Principal can only be adjudicated by the trial court during trial.

14. Further, from the alleged school certificate of the victim it reflects that only date of birth of the victim has been mentioned in it and even it is not mentioned when victim took admission in the school.

15. Further, during investigation ossification test of the victim was not conducted and victim in her both the statements recorded during investigation disclosed her age as 20 years.

16. Further, victim in her both the statements did not make any allegation of rape against the applicant and stated that she herself had gone along with the applicant and also performed marriage with him.

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since June, 2023.

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

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

20. Let the applicant-**Babloo** 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.

21. 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.

22. 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