

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50267 of 2023

Applicant :- Rajkumar Urf Praduman Nishad

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

Counsel for Applicant :- Alok Kumar Rai

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 upon the informant even in first week of November, 2023. Despite service of notice, none present on behalf of the informant.

2. Heard Sri Alok Kumar Rai, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 255 of 2023, under Sections 363, 366, 376 IPC and Section 5/6 POCSO Act, Police Station Geeda, District Gorakhpur during pendency of the trial.

4. FIR of the present case was lodged on 02.05.2023 against applicant and according to the FIR on 10.04.2023 applicant enticed away the daughter of the informant, who studied in class-VIII.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and actually victim herself had gone along with applicant as victim and applicant both loved to each other and thereafter she performed marriage with him and these facts are evident from her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

6. He further submits that however as per school record at the time of incident victim was about 16 years old but during investigation her ossification test was not conducted.

7. He further submits that actually victim is major girl and even appearance wise also she looked like a major girl aged about 18 years. He further submits that victim in her statement recorded

under Section 164 Cr.P.C. disclosed her age as 20 years. He further submits that it is a case of love affair and applicant is not having any criminal history and in the present matter he is in jail since 25.08.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record at the time of incident victim was about 16 years old, 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 during investigation stated that she herself had gone along with applicant and she also performed marriage with him and she is pregnant with the applicant.

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

10. However, as per school record victim at the time of incident was about 16 years old but during investigation her ossification test was not conducted. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not make any allegation against the applicant and categorically stated that she loved the applicant and from her statements it reflects that she herself had gone along with applicant and also performed marriage with him. It further reflects that she also conceived with the applicant, therefore, it reflects that it is a case of love affair.

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

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

13. Further, applicant is not having any criminal history and in the present matter he is in jail since 25.08.2023.

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

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

16. Let the applicant - **Rajkumar Urf Praduman Nishad** 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.

17. 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.

18. 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 :- 1.12.2023

AK Pandey