

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50329 of 2023

Applicant :- Santosh Yadav

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

Counsel for Applicant :- Mahadeo Singh Chandel

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Rajeev Dhar Dwivedi, learned AGA for the State apprised the Court that on 10.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri M.S. Chandel, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 108 of 2023, under Sections 363, 366, 376 IPC 3/4 POCSO Act, Police Station- Girowan, District- Banda, during pendency of the trial in the court below.
4. FIR of the present case was lodged against unknown person and according to the FIR, daughter of the informant aged about 16 years has gone somewhere from her house without informing anyone.
5. Learned counsel for the applicant submitted that during investigation, applicant was made accused in the present matter after recording of the statement of the victim under Section 161 Cr.P.C.
6. He further submitted that however, victim in her both the statements recorded during investigation stated that applicant under the false promise of marriage, made physical relationship with her and thereafter left her but entire allegation leveled against the applicant is totally false and baseless and applicant never sexually exploited her.
7. He further submitted that actually applicant and victim both were having good friendship and victim used to left her house and,

therefore, when she left her paternal home then informant i.e. her father lodged the FIR of the present case against unknown person.

8. He further submitted that even during investigation, after recording of her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. victim and her parents filed their respective affidavits before S.P. concerned and in their affidavits, they categorically stated that some dispute arose between victim and her mother and, therefore, she left her paternal home and thereafter she returned back to her home and their affidavits have been appended as Annexure No. 13 to the affidavit and from the perusal of the affidavit of the victim, her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. appears to be false.

9. He further submitted that applicant is not having any criminal history and he is in jail since 09.07.2023.

10. Per contra, learned AGA opposed the prayer for bail and submitted that victim appears to be minor girl aged about 16 years and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant sexually exploited her under the false promise of marriage but could not dispute the fact that during investigation, victim filed an affidavit alongwith her parents before S.P. concerned, in which, she resiled from her earlier statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. He further could not dispute the fact that at the time of her medical examination before doctor, victim stated that applicant did not commit rape with her.

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

12. However, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that under the false promise of marriage, applicant sexually exploited her but when she was medically examined on 26.05.2023 then before doctor, she stated that no rape was committed upon her and after recording her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. she alongwith her parents filed affidavit before S.P. concerned and from the perusal of her affidavit (Annexure-13) it reflects that her affidavit belies her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

13. Further, however, as per the school record, victim appears to be 16 years' old but during investigation, her ossification test was not conducted and even from her statements recorded under Sections

161 Cr.P.C. and 164 Cr.P.C. it cannot be said that she was not the consenting party. Further, alongwith the instant bail application the call details of the applicant and victim have been annexed, which shows that applicant and victim both were having conversations with each other.

14. Further, applicant is not having any criminal history and he is in jail since 09.07.2023.

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

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

17. Let the applicant- **Santosh Yadav** 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.

18. 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.

19. 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 :- 24.11.2023

KK Patel