

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53314 of 2023

Applicant :- Gulsher @ Gulla

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

Counsel for Applicant :- Prabhat Chandra Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Shatrughna Yadav, learned AGA for the State apprised the Court that on 15.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Prabhat Chandra Mishra, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 09 of 2023, under Sections 363, 376, 504 IPC & 3/4 POCSO Act, Police Station- Bhopa, District- Muzaffar Nagar, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and his family members and according to the FIR, applicant with the help of her mother enticed away the daughter of the informant aged about 15 years
5. Learned counsel for the applicant submitted that applicant is innocent and entire allegation made against the applicant is totally false and baseless and however, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that against her wishes, applicant made physical relationship with her but from her statements, it reflects that she herself had gone alongwith the applicant upto Manglaur and stayed with him for 20 days therefore, it appears that she was conseing party. He further submitted that it appears that after recovery, under the pressure of her parents, victim started making allegation against the applicant. He further submitted that even as per the school record, she was 17 years and 9 months' old and, therefore, it appears that she was

major. He further submitted that during investigation, her ossification test was not conducted.

6. He further submitted that applicant is not having any criminal history and he is in jail since 29.12.2023 i.e. for almost a year.

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

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

9. However, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant against her wishes made physical relationship with her but from both the statements of the victim, it reflects that she herself had gone alongwith the applicant upto Manglaur and stayed with him for 20 days and even as per the school record, she was around 18 years' old, therefore, defence taken by the applicant cannot be completely ruled out at this stage.

10. Further, applicant is not having any criminal history and he is in jail since January, 2023 i.e. for almost a year.

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

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

13. Let the applicant- **Gulsher @ Gulla** 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.

14. 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.

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

KK Patel