

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 59243 of 2022

Applicant :- Rohit Kumar

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

Counsel for Applicant :- Pankaj Kumar Yadav, Ajay Bahadur Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Ghanshyam Mishra, learned Brief Holder apprised the Court that on 22.12.2022, notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Vijay Kumar Advocate holding brief of Sri Ajay Bahadur Yadav, learned counsel for the applicant and Sri Ghanshyam Mishra, learned AGA for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 850 of 2022, under Sections 376 IPC and Section 3/4 POCSO Act, Police Station Kasya, District Kushi Nagar, during pendency of the trial in the court below.
5. FIR of the present case was lodged against the applicant and according to the FIR on 18.9.2022 at 8:30 am in the morning when daughter of the informant, aged about 16 years had gone to defecate, applicant committed rape upon her in the sugarcane field.
6. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and baseless and actually victim is major girl aged about 20 years and applicant and victim both were having love affair and when they were in the field with each other then in the meantime, informant witnessed them and thereafter he lodged the FIR of the present case.
7. He further submitted that during investigation, victim also under the pressure started making allegation of rape against the

applicant.

8. He further submitted that as per school record age of victim was 16 years 8 months at the time of incident but according to the CMO concerned her radiological age was between 18 to 22 years and this fact suggests that she was major.

9. He further submitted that story narrated by the victim in her both the statements recorded during investigation does not appear to be convincing and victim also refused for her internal examination.

10. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 19.9.2022 i.e. for last more than a year.

11. Per contra, learned AGA opposed the prayer for bail and submitted that victim is hardly 16 years 8 months old girl as per school record and she made allegation of rape against the applicant in her both the statements recorded under sections 161 and 164 Cr.P.C. and therefore, applicant should not be released on bail.

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

13. However, as per school record at the time of incident victim was 16 years 8 months old but according to the CMO concerned her radiological age was between 18 to 22 years and therefore, precisely at this stage, it cannot be said that victim was child below 18 years of age.

14. Further, however victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but considering the statements of the victim, defence taken by the applicant cannot be completely brushed aside, at this stage.

15. Further, applicant has no previous criminal history and he is in jail in the present matter since September, 2022 i.e. for last more than a year.

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

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

bail.

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

19. Let the applicant-**Rohit Kumar**, 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.

20. 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.

21. 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

Ankita