

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50686 of 2023

Applicant :- Amit Savita

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

Counsel for Applicant :- Satyam Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Pradeep Kumar, learned A.G.A. for the State apprised the Court that notice has been served upon informant on 13.11.223. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Satyam Pandey, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 393 of 2023, under Sections 363, 366, 376N(2) IPC and Section 5/6(L) POCSO Act, Police Station Naubasta, District Kanpur Nagar during pendency of the trial.

4. FIR of the present case was lodged against one Rakesh Baheliya on the basis of suspicion that he enticed away the daughter of the informant aged about 16 years.

5. Learned counsel for the applicant submits that applicant was not named in the FIR but when the statement of the victim was recorded under Section 161 Cr.P.C., then she stated that she herself had gone along with the applicant.

Thereafter applicant was made accused in the present matter.

6. He further submits that victim in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. has categorically stated that she herself had gone along with the applicant but in spite of that applicant has been made accused in the present matter on the ground that as per her High School record, she was aged about 16-1/2 years at the time of incident. He further submits that in fact victim is a major girl aged about 18 years and intentionally during investigation her ossification test was not conducted. He next submits that even appearance vice victim looks like major girl.

7. He further submits that it is a case of love affair and applicant is not having any previous criminal history and he is in jail since 22.7.2023.

8. Per contra, learned AGA opposed the prayer for bail and submits that according to the school record, victim was below 17 years old girl but could not dispute the fact that during investigation her ossification test was not conducted. He further could not dispute the fact that victim did not make any allegation in her both the statements recorded during investigation.

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

10. However from the school record of the victim, it appears that at the time of incident, victim was aged about 16-1/2 years old but during investigation her ossification test was not conducted. Further, victim in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. has categorically

stated that she herself had gone along with the applicant and did not make any allegation against the applicant. The object behind POCSO Act is to protect the child from sexual abuse and not to punish the accused and victim i.e. girl for love affair. In my view, by ignoring the statements of the victim recorded during investigation, it is not proper to reject the bail application of an accused. Law is settled that bail application should not be dismissed either for punitive or preventive purposes. Further, it appears to be a case of love affair and applicant is not having any criminal history and he is in jail since 22.7.2023.

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-Amit Savita 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 :- 28.11.2023

Aiman