

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50649 of 2023

Applicant :- Gulfam

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

Counsel for Applicant :- Krishna Kant Yadav, Sachchidanand Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Shri Pradeep Kumar, learned A.G.A. for the State-respondent apprise the Court that on 18.11.2023, notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri Krishna Kant Yadav, learned counsel for the applicant and Shri Pradeep Kumar, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.153 of 2023, under Sections 363, 366, 376 IPC & Sections 3/4 POCSO Act, 2012, Police Station Milak, District Rampur, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 05.07.2023 against applicant and according to the FIR, applicant enticed away the niece of the informant aged about eighteen years. It is further mentioned in the FIR that niece of the informant has also taken Rs.50,000/- and jewellerys from her house.

5. Learned counsel for the applicant submits that entire allegations

made against applicant are totally false and baseless and victim in her statement recorded under Section 161 Cr.P.C. disclosed her age about eighteen years and stated that she herself had gone along with the applicant and with her consent physical relationship was developed between both of them but subsequently when her statement under Section 164 was recorded, she although disclosed her age about sixteen years but did not state that applicant ever made physical relationship with her.

6. He further submits that victim in her statement recorded under Section 161 Cr.P.C. categorically stated that she was an illiterate girl but in her statement under Section 164 Cr.P.C., she stated that she studied upto class third and according to her school record, at the time of incident she was fourteen years old but there are material contradictions in the age of the victim mentioned in her school record by herself in her statement and by the informant.

7. He further submits that even as per the C.M.O. concerned, the radiological age of the victim is about seventeen years, therefore, at this stage, it cannot be said that she was below eighteen years old girl.

8. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 09.07.2023.

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

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

11. Considering the fact there is discrepancy with regard to the age

of the victim and there are material contradictions in her both the statements recorded under Sections 161 and 164 Cr.P.C., 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- **Gulfam**, 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
Zafar