

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51326 of 2023

Applicant :- Aakash

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

Counsel for Applicant :- Kamal Yash Sahwal,Virendra Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Shatruhan Yadav, learned AGA for the State apprised the Court that notice has been served upon the informant on 19.11.2023. Despite service of notice, none present on behalf of the informant.

2. Heard Sri Virendra Kumar Gupta, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 428 of 2023, under Sections 363, 376 IPC and Section 3/4(2) POCSO Act, Police Station Crossing Republic, District Ghaziabad during pendency of the trial.

4. FIR of the present case was lodged against applicant on the basis of suspicion that he might have enticed away the daughter of the informant aged about 15 years.

5. Learned counsel for the applicant submitted that merely on the basis of suspicion FIR of the present case was lodged against the applicant and in fact victim herself had gone along with applicant and she also performed marriage with him and this fact is evident from her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

6. He further submits that however even as per victim she was about 15 years old but she in her statements recorded under Section 164 Cr.P.C. stated that she is an illiterate girl but during investigation Investigating Officer procured the Transfer Certificate of victim of class-I and according to it, at the time of

incident, victim was 15 years 3 months old but in the light of the statement recorded under Section 164 Cr.P.C. no reliance can be placed on the Transfer Certificate of the victim.

7. He further submits that intentionally during investigation the ossification test of the victim was not conducted as victim is major girl and even appearance wise also she looked like a major girl. He further submits that it is a case of love affair and applicant is not having any criminal history and in the present matter he is in jail since 18.10.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that as per Transfer Certificate of class-I of the victim she was hardly 15 years 3 months old and according to victim herself, she is around 15 years old, therefore, even if her consent is reflected from the record, it hardly matters.

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

10. However, from the Transfer Certificate of the victim of class-I, it appears that at the time of incident she was about 15 years 3 months old but in the statement recorded under Section 164 Cr.P.C. victim stated that she is not a literate girl, therefore, I find force in the argument advanced by learned counsel for the applicant, in the light of the statement of the victim recorded under Section 164 Cr.P.C. at this stage no reliance can be placed on her Transfer Certificate of class-I.

11. Further, however, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. disclosed her age as 15 years but during investigation her ossification test was not conducted and except Transfer Certificate of class-I of the victim, there is no other document of victim on record to ascertain her age, therefore, at this stage, it cannot be said that victim is even below 18 years old and argument advanced by learned counsel for the applicant that appearance wise victim looked like a major girl cannot be ruled out at this stage.

12. Further, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she herself had gone along with applicant as her parents turned her out from paternal home, therefore, she herself had gone along with applicant and performed marriage with him, therefore, it appears to be a case of love affair and applicant is also a young lad aged about 21 years.

13. The object behind POCSO Act is to protect the child from sexual abuse and not to punish the accused for love affair. In my view, by ignoring the statements of the girl (victim) recorded during investigation in the cases like present one, the bail of an accused should not be dismissed.

14. Further, the law is settled that bail should not be dismissed either for punitive or preventive purpose.

15. Further, applicant is not having any criminal history and in the present matter he is in jail since 18.10.2023.

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

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

18. Let the applicant - **Aakash** 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.

19. 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.

20. 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 :- 1.12.2023

AK Pandey