

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50854 of 2023

Applicant :- Jagmohan

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

Counsel for Applicant :- Gaurav Gupta

Counsel for Opposite Party :- G.A.,Abhishek Trivedi

Hon'ble Sameer Jain,J.

1. Heard Sri Gaurav Gupta, learned counsel for the applicant, Sri Abhishek Trivedi, learned counsel for the informant and Sri Jhamman Ram, learned AGA-I, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Sessions Trial No.1028 of 2023 arising out of Case Crime No.834 of 2022, under Sections 363, 366, 376 (2), (n), 376(3), 420 468 and 471 IPC and Section 5(j)(ii)/6 POCSO Act, Police Station Jalalabad, District Shahjahanpur during pendency of the trial.

3. FIR of the present case was lodged against unknown persons and according to the FIR, daughter of the informant has gone somewhere from her home in the absence of her parents.

4. Learned counsel for the applicant submits that nobody was named in the FIR but during investigation applicant was made accused in the present matter.

5. He further submits that from both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. it appears that she herself had gone along with the applicant and also started living with him as his wife.

6. He further submits that in the statement under Section 161

Cr.P.C. victim also stated that she is pregnant with the applicant.

7. He further submits that medical report of the victim also corroborates her version.

8. He further submits that however as per school record at the time of incident victim was about 15-1/2 years old and according to CMO concerned her radiological age was around 16 years but in fact she is major and even appearance wise she looks like major aged about more than 18 years.

9. He further submits that it is a case of love affair and applicant is not having any previous criminal history and in the present matter he is in jail since 29.3.2023, i.e., for almost nine months.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record victim is hardly 15-1/2 years and even as per CMO concerned, her radiological age was around 16 years, therefore, her consent is immaterial.

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

12. However, as per school record and ossification test of the victim it reflects that she was around 16 years old but victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that she herself had gone along with applicant and started living with him as his wife and further it reflects from her statement under Section 161 Cr.P.C. that she also conceived with the applicant and her medical report also corroborates this fact.

13. The present case appears to be a case of love affair.

14. The object behind the POCSO Act is to protect a child from sexual abuse and not to punish the victim and the accused for their love affair.

15. In my view, in cases like present one by ignoring the statements of the victim recorded during investigation it is not proper to reject the bail application of an accused.

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

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since March, 2023, i.e., for last almost nine months.

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

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

20. Let the applicant-**Jagmohan** 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.

21. 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.

22. 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 :- 13.12.2023
SKM