

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50931 of 2023

Applicant :- Brijmohan Maddheshiya

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

Counsel for Applicant :- Hemant Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 28.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Hemant Kumar Dubey, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.242 of 2023, under Sections 376 and 376D IPC and Section 3/4 POCSO Act, Police Station Tarkulwa, District Deoria during pendency of the trial.
5. FIR of the present case was lodged against the applicant and according to the FIR, on 17.8.2023 at about 8.00 PM in the evening applicant committed rape upon the daughter of the informant aged about 14 years. It is further mentioned in the FIR that earlier also applicant committed rape upon the daughter of the informant and also prepared her obscene videos.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually

victim is major aged about 18 years and applicant and victim both were having love affair and when this fact was revealed to her family members then FIR of the present case was lodged.

7. He further submits that during investigation under the pressure of her parents victim also stated against the applicant.

8. He further submits that in the statement of victim recorded under Section 161 Cr.P.C. only against applicant allegation of rape and sexual exploitation was made but when the statement of the victim under Section 164 Cr.P.C. was recorded then she introduced some other person along with the applicant and this fact suggests that she was not the reliable witness.

9. He further submits that as per allegation applicant also prepared obscene videos of the victim and under the threat to viral the same he committed rape upon her but during investigation no such videos of the victim could be recovered.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 19.8.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim is about 14 years old and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated against the applicant but he could not dispute the fact that as per CMO concerned her radiological age is around 18 years and there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

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

record of the case.

13. However, according to the school record victim appears to be about 14 years old and she also made allegation of rape against the applicant in her both the statements recorded under Sections 161 and 164 Cr.P.C. but there are material contradictions in both the statements of the victim and as per CMO concerned her radiological age was found 18 years and therefore, defence taken by applicant cannot be completely ruled out at this stage.

14. Further, however as per prosecution applicant also prepared obscene videos of the victim and under the threat to viral the same committed rape upon her but during investigation no such video of the victim could be recovered.

15. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 19.8.2023.

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-**Brijmohan Maddheshiya** 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 :- 14.12.2023
SKM