

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51032 of 2023

Applicant :- Sudarshan @ Aditya Mishra

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

Counsel for Applicant :- Surendra Mohan Mishra, Vishveshwar Mani Tripathi

Counsel for Opposite Party :- G.A., Alauddin, Fakhruddin

Hon'ble Sameer Jain, J.

1. Heard Sri Surendra Mohan Mishra, learned counsel for the applicant, Sri Alauddin, learned counsel for the informant and Sri Imran Khan, learned AGA, 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 Case Crime No.274 of 2023, under Sections 363, 366, 504, 506, 323 and 376 IPC and Section 5/6 POCSO Act, Police Station Siddharth Nagar, District Siddharth Nagar during pendency of the trial.

3. FIR of the present case was lodged against the applicant and according to the FIR, applicant enticed away the sister of the informant aged about 16 years.

4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and this fact is evident from the statement of the victim recorded under Section 161 Cr.P.C.

5. He further submits that victim in her statement under Section 161 Cr.P.C. stated that she herself had gone along with applicant and did not make any allegation of rape and categorically stated that applicant did not commit rape upon her but when her statement under Section 164 Cr.P.C. was recorded then she

changed her version and started making allegation of rape against the applicant and this fact clearly suggests that actually under the pressure of her parents subsequently victim started making allegation of rape against the applicant and no reliance can be placed on her statement recorded under Section 164 Cr.P.C.

6. He further submits that as per school record victim is aged about 16 years and according to CMO concerned her radiological age was about 17 years and therefore, at this stage it cannot be said that victim was below 18 years of age and in fact victim is major more than 18 years of age and even appearance wise she looks like major.

7. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 19.9.2023.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record and according to CMO concerned, victim was below 18 years old and she in her statement under Section 164 Cr.P.C. stated that applicant committed rape upon her but both the learned counsels could not dispute the fact that she in her statement under Section 161 Cr.P.C. categorically stated that applicant did not commit rape and from her statement it reflects that she herself had gone along with the applicant.

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

10. However, as per school record and certificate issued by CMO concerned it appears that victim was below 18 years old girl and

she made allegation of rape against the applicant in her statement under Section 164 Cr.P.C. but earlier when her statement under Section 161 Cr.P.C. was recorded then she did not make any allegation of rape against the applicant and categorically denied the allegation of rape and from her statement under section 161 Cr.P.C. it reflects that she herself had gone along with the applicant therefore, there are material contradictions in both the statements of the victim recorded during investigation.

11. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 19.9.2023.

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

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

14. Let the applicant-**Sudarshan @Aditya Mishra** 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.

15. 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.

16. 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