

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51532 of 2023

Applicant :- Rajan Nishad

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

Counsel for Applicant :- Raj Kumar Mishr

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 25.11.2023.

2. Despite service of notice, none appeared on behalf of the informant.

3. Heard Sri Rakesh Kumar Mishra, learned Advocate, holding brief of Sri Raj Kumar Mishra, 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.247 of 2022, under Sections 452,504,506 and 376 IPC and Section 3/4 POCSO Act, Police Station Naini, District Prayagraj during pendency of the trial.

5. FIR of the present case was lodged against the applicant and his family members and according to the FIR, applicant and his family members forcibly abducted the daughter of the informant from her house.

6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and in fact victim is a major girl and she herself had gone along with

applicant.

7. He further submits that victim in her statement under Section 161 Cr.P.C. stated that applicant abducted her and took her to Pune and also committed rape upon her and in the statement under Section 164 Cr.P.C. also she stated that applicant committed rape but from the perusal of the statement of the victim recorded under Section 164 Cr.P.C. it also reflects that she wanted to join the company of the applicant and this fact clearly suggests that actually victim herself had gone along with the applicant but subsequently after recovery under the pressure of her parents she started making allegation of rape against the applicant.

8. He further submits that even as per school record of the victim at the time of incident she was about 17 and 1/2 years old and according to CMO concerned, her radiological age was found about 18-20 years and, therefore, at this stage it cannot be said that victim was not a major girl.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 31.1.2023.

10. Per contra, learned AGA opposed the prayer for bail and submits that there is allegation of rape against the applicant in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and, therefore, even if victim is major then it hardly matters but he could not dispute the fact that as per the statements of the victim recorded under Section 164 Cr.P.C. she even herself wanted to join the company of the applicant and as per allegation applicant has taken her upto Pune (Maharashtra) from Allahabad (Uttar Pradesh) but in between she did not raise any alarm.

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

12. However, in the statements under Sections 161 and 164 Cr.P.C. victim made allegation of rape against the applicant but even from her both the statements it reflects that she travelled along with the applicant upto Pune (Maharashtra) from Allahabad (Uttar Pradesh) and in between she did not raise any alarm.

13. Further, even as per school record the age of the victim was around 17 and 1/2 years and according to the CMO concerned, her radiological age was about 18-20 years and, therefore, at this stage it cannot be said that she was minor below 18 years old girl.

14. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 31.1.2023, i.e., for last about more than 10 months.

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

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

17. Let the applicant-**Rajan Nishad** 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.

18. 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.

19. 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 :- 2.12.2023
SKM