

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51668 of 2023

Applicant :- Imran

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

Counsel for Applicant :- Vipin Kumar,Jai Kishan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Ravi Kant Kushwaha, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 29.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Sandeep Kumar, learned Advocate, holding brief of Sri Vipin Kumar, learned counsel for the applicant and Sri Ravi Kant Kushwaha, 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.107 of 2023, under Sections 363, 366 and 376 IPC and Section 3/4 POCSO Act, Police Station Nidhauri Kalan, District Etah during pendency of the trial.
5. FIR of the present case was lodged on 28.6.2023 against the applicant under Sections 363 and 366 IPC and according to the FIR, on 26.6.2023 the daughter of the informant aged about 13 years had gone to collect her mark sheet and transfer certificate but did not return. It is further mentioned in the FIR that applicant, who is tempo driver, has enticed away her daughter.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually

victim is not 13 years old girl but she is major aged about more than 18 years.

7. He further submits that with regard to the age of victim, her transfer certificate of Class-V is on record and except this there is no other documentary evidence available with regard to her age and in view of the observation made by the Apex Court in the case of **P.Yuvaprakash Vs. State Rep. By Inspector of Police(Criminal Appall No.(S). 1898 of 2023** dated 18.7.2023 the date of birth mentioned in the transfer certificate is not admissible.

8. He further submits that even during investigation ossification test of the victim was not conducted and, therefore, there is no evidence on record at this stage which can show that victim is below 18 years old girl.

9. He further submits that in the statement under Section 161 Cr.P.C. victim stated that applicant forcibly had taken her from her school and took up upto Bharatpur (Rajasthan) but when her statement under Section 164 Cr.P.C. was recorded then she did not state that applicant has taken her to Rajasthan and only stated that applicant forcibly committed rape upon her behind the bushes and, therefore, there are material contradictions in both the statements of the victim recorded during investigation and this fact clearly suggests that applicant has falsely been implicated in the present matter.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 29.6.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that as per transfer certificate of the school of the victim,

at the time of incident she was hardly 13 years old and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant abducted her and committed rape upon her.

12. Learned AGA however could not dispute the fact that except transfer certificate of the victim, there is no other document of any school of the victim on record to ascertain her age.

13. He further could not dispute the fact that during investigation ossification test of the victim was not conducted.

14. Learned AGA also could not dispute the fact that in two statements recorded under Sections 161 and 164 Cr.P.C. victim narrated all together entire different story.

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

16. However, from the school record it appears that at the time of incident victim was about 13 years old and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant abducted and committed rape upon her but with regard to her age her transfer certificate of a school is on record and except this there is no other document of the school of the victim is on record with regard to her age.

17. In view of the observation of the Apex Court in the case of **P.Yuvaprakash (supra)** date of birth of a child cannot be ascertained on the basis of his/her transfer certificate of a school.

18. Further, except the transfer certificate of the victim, there is no other document on record which can show that she is below 18 years of age as during investigation even her ossification test was not conducted.

19. Further, in the statement recorded under Section 161 Cr.P.C.

victim stated that applicant has taken her from her school and took her to Etah then Agra and then Bharatpur (Rajasthan) through trains but when her statement under Section 164 Cr.P.C. was recorded then she did not state that applicant has taken her upto Rajasthan and only stated that applicant abducted her while she was going to school for the purpose to collect her transfer certificate and thereafter he committed rape upon her behind the bushes, therefore, there are material contradictions in both the statements of the victim.

20. Further, from the recovery memo which has been annexed at page 28 of the paper book along with the instant bail application it appears that victim was recovered from Bharatpur (Rajasthan) and, therefore, the defence taken by applicant that applicant and victim were having love affair and victim herself had gone to Rajasthan, cannot be completely brushed aside at this stage. Further according to applicant, victim is more than 18 years old. The defence taken by applicant that victim is major aged about 18 years can not be completely discarded as there is no admissible evidence on record which can show that victim is below 18 years of age.

21. Further, applicant is not having any previous criminal history and he is in jail in the present matter since 29.6.2023.

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

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

24. Let the applicant-**Imran** 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.

25. 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.

26. 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 :- 5.12.2023

SKM