

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52588 of 2023

Applicant :- Hari Lal

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

Counsel for Applicant :- Shahroze Khan, Mohammad Zafar Yab Khan

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 upon the informant on 15.11.2023. Despite service of notice, none present on behalf of the informant.

2. Heard Sri Mohammad Zafar Yab Khan, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 139 of 2023, under Sections 363, 366-A, 376(3) IPC and Section 3/4(2) POCSO Act, Police Station Trilokpur, District Siddharth Nagar during pendency of the trial.

4. FIR of the present case was lodged against five named persons (non applicant) and some unknown persons and according to the FIR the nominated accused persons along with their unknown associates enticed away the daughter of the informant aged about 15 years.

5. Learned counsel for the applicant submitted that applicant was not named in the FIR but during investigation on the basis of statement of the victim recorded under Section 161 Cr.P.C. he was made accused in the present matter.

6. He next submits that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that she herself had gone along with applicant and also disclosed her age as 19 years. He next submits that victim in the statement

recorded under Section 161 Cr.P.C. did not make any allegation of rape or making physical relationship against the applicant but when her statement under Section 164 Cr.P.C. was recorded then she stated that she had already performed marriage with him and applicant and victim started residing as husband and wife.

7. He next submits that as per school record victim was about 14 years old girl but as per CMO concerned her radiological age is 18 years and there is huge difference in the age of the victim in both the records, therefore, at this stage, it cannot be said that victim is minor below 18 years.

8. He next submits that parents of the victim disclosed her wrong date of birth in her school record and in fact she is major and even appearance wise victim looked like a major girl. He further submits that victim as per statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. appears to be consenting party but in the statement recorded under Section 161 Cr.P.C. she did not state that either she performed marriage with applicant or any physical relationship were developed between both of them, therefore, according to statement recorded under Section 161 Cr.P.C. no offence of rape is made out against the applicant.

9. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 11.07.2023.

10. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. From the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., it appears that victim herself had gone along with applicant and in the statement recorded under Section 161 Cr.P.C. victim did not state that she either solemnized marriage with the applicant or physical relationship were developed between both of them however in her statement recorded under Section 164 Cr.P.C. she disclosed that she performed marriage with applicant and physical relationship were developed between both of them with her consent, therefore, there are contradictions in the both the statements of the victim.

13. Further, however, as per school record victim is about 14 years old girl but according to CMO concerned her radiological age was about 18 years, therefore, at this stage it cannot be precisely said that victim is below 18 years old girl.

14. The object behind POCSO Act is to protect the child from sexual abuse and not to punish accused and victim for love affair. In my view, by ignoring the statements of the girl (victim) recorded during investigation in the cases like present one, the bail of an accused should not be dismissed.

15. Further, the law is settled that bail should not be dismissed either for punitive or preventive purpose.

16. Further, applicant is not having any criminal history and in the present matter he is in jail since 11.07.2023.

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

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

19. Let the applicant - **Hari Lal** 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.

20. 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.

21. 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 :- 8.12.2023

AK Pandey