

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52253 of 2023

Applicant :- Narendra Ahirwar

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

Counsel for Applicant :- Nanhe Lal Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Hanuman Prasad Kushwaha, Advocate apprised the Court that today he filed his power on behalf of the informant in the Registry of this Court, therefore, his name is not shown in the cause list.

2. Heard Ms. Priya Chand, Advocate holding brief of Sri Nanhe Lal Tripathi, learned counsel for the applicant, Sri Hanuman Prasad Kushwaha, learned counsel for the informant and Sri Shatruhan Yadav, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 160 of 2021, under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station Narahat, District Lalitpur during pendency of the trial.

4. FIR of the present case was lodged against the applicant and according to the FIR applicant enticed away the daughter of the informant aged about 16 years. It is further mentioned in the FIR that daughter of the informant has also taken some silver jewelries and Rs. 7,000/- from her home.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim is major girl aged about more than 18 years and both victim and applicant loved each other and victim herself had gone along with applicant and also performed marriage with him.

6. She further submits that when applicant and victim came to know about the lodgement of the FIR then they approached this Court in Criminal Misc. Writ Petition No. 13007 of 2022 and after

order passed by the Division Bench of this Court, the statement of the victim was recorded under Section 164 Cr.P.C. and her age was ascertained by the CMO concerned.

7. She further submits that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she herself had gone along with applicant and also performed marriage with him and as per CMO concerned the age of the victim was around 19 years.

8. She further submits that after the medical, victim was returned back to her paternal home but she again left her paternal home and started living with the applicant and victim is also deponent in the present bail application. She further submits that as victim started living with the applicant as his wife and she also delivered a child with the wedlock of applicant, therefore, earlier applicant could not appear before the court concerned as he is a lay man and he was under impression that as victim is residing with him as his wife, therefore, no action could be taken against him but when applicant came to know that coercive measures are being taken against him then he appeared before the court concerned on 29.08.2023 and since then he is in jail.

9. She further submits that marriage of the applicant and victim has been registered and registration certificate has been annexed along with instant bail application at page-42 of the paper-book. She further submits that applicant is not having any previous criminal history apart from one another case, which was subsequently lodged by the father of the victim with regard to elopement of the victim.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that as per school record victim is about 17 years old, therefore, her consent is immaterial but both the counsels could not dispute the fact that as per CMO concerned, the radiological age of the victim was about 19 years. They further could not dispute the fact that during pendency of the investigation of the present matter, applicant and victim both approached this Court and after the order passed by this Court, statement of the victim under Section 164 Cr.P.C. was recorded and her radiological age was ascertained by the CMO concerned.

11. They further could not dispute the fact that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not state anything against the applicant and victim herself is

deponent of the case, who is residing in the house of applicant. They further could not dispute the fact that victim delivered a child with the wedlock of applicant.

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

13. Even as per school record, the age of the victim at the time of incident was 17 years, however, according to CMO concerned the age of the victim was around 19 years. Further, 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 performed marriage with him and she is also deponent in the instant bail application.

14. From the record, it further reflects that she had delivered a child and marriage of the applicant and victim is duly registered. It however reflects that FIR of the present case was lodged in the year 2021 but applicant appeared before the court concerned on 29.08.2023 i.e. after two years but in between it appears that when applicant and victim came to know about the lodgement of the FIR then they approached this Court in criminal writ jurisdiction and after the order passed by the Division Bench of this Court, the statement of the victim was recorded under Section 164 Cr.P.C. and CMO concerned ascertained her radiological age.

15. Further, however, from the record it also reflects that another FIR with regard to Sections 363, 366, 376 IPC was also lodged against the applicant but it was also lodged by the informant of the present case with regard to elopement of his daughter, who is deponent/victim of the present case and it was lodged when after medical examination, victim of the case returned back to her paternal home but again she left her paternal home and started living with applicant.

16. Further, applicant is not having any criminal history and in the present matter he is in jail since 29.08.2023.

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 - **Narendra Ahirwar** 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 :- 6.12.2023

AK Pandey