

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52935 of 2023

Applicant :- Aashkar

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

Counsel for Applicant :- Irshad Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Shatrughan Yadav, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 2.12.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Mohd. Faiz, learned Advocate, holding brief of Sri Shatrughan Yadav, learned counsel for the applicant and Sri Shatrughan Yadav, 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.301 of 2023, under Sections 342, 363, and 376 IPC and Section 3/4 POCSO Act, Police Station Hayat Nagar, District Sabhal during pendency of the trial.
5. 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 20 years.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually applicant and victim both loved each other and victim, who is major, herself had gone along with applicant but as applicant

belongs to different community, therefore, when victim was recovered then under the pressure of her parents she started making allegation of rape against the applicant.

7. He further submits that however as per the informant and victim, at the time of incident victim was about 20 years but during investigation ossification test of the victim was conducted and according to which the age of victim was found about 17 years and thereafter Section 3/4 POCSO Act has been added.

8. He further submits that even according to the victim and her parents she was major at the time of incident, therefore, on the basis of ossification test report of the victim at this stage it cannot be said that at the time of incident victim was below 18 years.

9. He further submits that victim in her statement under Section 164 Cr.P.C. admitted the fact that she loved the applicant and this fact strengthen the defence version and it appears, victim herself had gone along with the applicant.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 29.9.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that victim was about 17 years old and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated against the applicant but he could not dispute the fact that as per the victim and informant, victim was about 20 years old at the time of incident and even from the record it reflects that applicant and victim travelled upto Ajmer and stayed in a Hotel and during investigation when the statement of the Hotel Manager was

recorded then from his statement it reflects that victim according to her own wish had gone along with applicant.

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

13. However, as per ossification test report victim was about 17 years old but even as per victim and the informant, she was about 20 years old.

14. Further, however, victim in her statement under Section 161 Cr.P.C. stated that applicant enticed away her and committed rape upon her but when her statement under Section 164 Cr.P.C. was recorded then she stated that applicant abducted her but did not state that any rape was committed upon her.

15. Further, from the perusal of the statement of Hotel Manager which was produced by learned AGA during the course of argument it reflects that applicant and victim had gone to Ajmer and the statement of Manager of the Hotel shows that victim herself had gone along with the applicant and, therefore, argument advanced by the learned counsel for the applicant cannot be completely ruled out at this stage that due to the reason that applicant belongs to different community, therefore, after recovery under the pressure of her parents victim made statements against the applicant.

16. Further, applicant is not having any previous criminal history and in the present matter he is in jail since September, 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-**Aashkar** 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 :- 11.12.2023
SKM