

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38566 of 2023

Applicant :- Raj Kamal Viswakarma

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

Counsel for Applicant :- Ramesh Kumar Saxena

Counsel for Opposite Party :- G.A.,Dhirendra Kumar Verma,Pragyakar Mani Tripathi

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed on behalf of the applicant in Court today is taken on record.
2. None appeared on behalf of the informant even in the revised call.
3. Heard Shri Ramesh Kumar Saxena, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No.0239 of 2023, under Sections 363, 366, 376, 354, 465, 467 IPC, Sections 7/8 & 3/4 POCSO Act and Sections 3(2) (V) of S.C./S.T. Act, Police Station Kotwali Jalaun, District Jalaun, during pendency of the trial in the court below.
5. FIR of the present case was lodged against the applicant and according to the FIR, applicant has enticed away the daughter of the informant.
6. Learned counsel for the applicant submitted that in the F.I.R., entire allegation made against the applicant is totally false and

baseless and when the statement of the victim was recorded under Section 161 Cr.P.C., she stated that earlier applicant had made physical relationship with her and thereafter Section 376 I.P.C. was added. He further submitted that in her statement recorded under Section 164 Cr.P.C., she has categorically stated that no physical relationship was established between her and applicant, therefore, there are material contradictions in both the statements recorded under Sections 161 and 164 Cr.P.C. and in view of the same, it reflects that she had gone with the applicant according to her own sweet will. He further submitted that however as per the school records, the age of the victim is fourteen years but during investigation her ossification test was not conducted. He further submitted that appearance wise, she looked like more than eighteen years of age.

7. He further submitted that applicant is not having any criminal history and he is in jail in the present matter since 06.07.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record, at the time of incident victim was fourteen years of age but could not dispute the fact that the victim in her statement recorded under Section 164 Cr.P.C. has categorically stated that no physical relationship was ever established between her and applicant.

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

10. Although as per the school record, victim was about 14 years of age but during the investigation her ossification test was not conducted. Further, although in the statement recorded under Section 161 Cr.P.C., she made allegation of rape and sexual exploitation against applicant but when the statement of the victim

was recorded under Section 164 Cr.P.C. then she has categorically stated that applicant did not make any physical relationship with her and therefore, there are material contradictions in the statements recorded under Sections 161 and 164 Cr.P.C.

11. Further, the applicant is not having any criminal history and he is languishing in jail in the present matter since 06.07.2023.

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

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

14. Let the applicant- **Raj Kamal Viswakarma**, 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.

15. 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.

16. 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 :- 18.10.2023

Zafar