

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45007 of 2023

Applicant :- Mrigraj Gautam @ Rippu

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

Counsel for Applicant :- Dharm Singh Parmar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised. As informed by learned A.G.A., notice to the informant has been served on 1.9.2023.

2. Heard learned counsel for the applicant as well as Sri Roshan Kumar Singh, learned A.G.A. for the State and perused the material placed on record.

3. Applicant seeks bail in Case Crime No. 82 of 2023, U/S 363, 366 IPC and 7/8 Protection of Children From Sexual Offences Act, Police Station Ata, District Jalaun, during the pendency of trial.

4. As per prosecution story, the applicant, in connivance with the other accused persons, is stated to have enticed away the minor daughter in the night of 13.5.2023. It is also alleged in the FIR that she had taken the mangalsutra of her sister-in-law alongwith Rs. 10 thousand from the house.

5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. Learned counsel has also stated that the FIR is delayed by about more than 12 hours and there is no explanation for the said delay caused. It is further stated that as per the school leaving certificate, her date of birth is 10.7.2008, as such, it falls just two months less than 15 years. She looks much older than her age mentioned in school certificate.

6. Learned counsel for the applicant has placed much reliance on the settled case law of the Apex Court in **Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673**, wherein it has been stated that it is more often in the Indian Society that person shows the age of their wards much below than their actual age.

7. Learned counsel has further stated that it is simply a school leaving certificate from a local school and cannot be taken into consideration. Learned counsel has also stated that no ossification test has been conducted. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 18.5.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Learned A.G.A. has vehemently opposed the bail application but has not disputed the fact that there is no criminal history of the applicant.

9. POCSO was formulated to protect children under the age of 18 years from sexual exploitation. Nowadays more often than not it has become a tool for their exploitation. The Act was never meant to criminalise consensual romantic relationships between adolescents. However, this has to be seen from the facts and circumstances of each case.

10. The fact of consensual relationship borne out of love should be of consideration while granting bail because it would amount to perversity of justice if the statement of victim was ignored and accused was left to suffer behind jail.

11. Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, the statement of victim, larger mandate of the Article 21 of the Constitution of India and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

12. Let the applicant- **Mrigraj Gautam @ Rippu**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

13. In case of breach of any of the above conditions, it shall be a

ground for cancellation of bail.

14. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 26.10.2023

Shalini