

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.2089 of 2022

Mohd. Faiyyaz

.....Applicant

Versus

State of Uttarakhand

.....Respondent

Present:-

Ms. Prabha Naithani, Advocate for the applicant.

Ms. Manisha Rana Singh, AGA for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Mohd. Faiyyaz is in judicial custody in Case Crime No.161 of 2022, under Sections 376, 323, 366-A IPC and 3/4 of POCSO Act, P.S. Nehru Colony, District Dehradun. He has sought his release on bail.

2. Heard learned counsel for the parties and perused the record.

3. This is the second bail application. The first bail application was dismissed as withdrawn on 19.07.2021.

4. According to the FIR, on 22.05.2022 at about 6.30 in the evening, the applicant enticed a young girl of 16 years of age from her house; the applicant took the victim at a secluded place and did mar-peat with her and tried to disrobe her.

5. Learned counsel for the applicant would submit that the FIR is false. She would submit that the

victim was in relationship with the applicant; the mother of the victim and the informant were not happy with their relationship, therefore, she lodged false FIR. She would submit that the victim and the applicant both were talking to each other on WhatsApp. Reference has been made to the WhatsApp chat, Annexure-2, to argue that, in fact, it reveals that the story in FIR is false.

6. Learned State Counsel would submit that the victim has supported the prosecution case during trial. She would submit that with regard to the WhatsApp chat, the victim has been cross-examined.

7. It is the stage of bail. Much of the discussion at this stage is not expected of. To the extent of appreciating the controversy, the matter may be examined with the caveat that any observation, made at this stage, shall have no bearing at any subsequent proceeding or at the trial.

8. According to the FIR, it is a case of mar-peat and attempted disrobing the victim. The victim claims that she is a child. She has admitted that she was messaging the applicant, although, according to her, she wanted to purchase an Activa. But in para 8 of the cross-examination done on 21.03.2022, the victim has admitted that from 10.05.2022 to 22.05.2022, whatever the

messages she has sent to the applicant, she did not speak about purchase of the Aactiva.

9. On behalf of the applicant, WhatsApp chat has been referred to argue that the parties were in relationship.

10. According to the statement of the victim, she was rescued by a Village Pradhan, who telephoned to her mother when the applicant disrobed the victim at a secluded place.

11. The Court wanted to know from the learned State Counsel as to whether that Village Pradhan has been made a witness or not? The answer is in negative.

12. Having considered, this Court is of the view that it is a case fit for bail and the applicant deserves to be enlarged on bail.

13. The bail application is allowed.

14. Let the applicant be released on bail, on his executing a personal bond and furnishing two reliable sureties, each of the like amount, to the satisfaction of the court concerned.

(Ravindra Maithani, J)

26.12.2023