

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1211 of 2023

Applicant :- Mohammad Alam

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

Counsel for Applicant :- Ravindra Kumar

Counsel for Opposite Party :- G.A.,Punita Pandey,Shweta Pandey

Hon'ble Sameer Jain,J.

1. Heard Sri Ravindra Kumar, learned counsel for the applicant, Ms. Sweta Pandey, learned counsel for the informant and Sri Santosh Nigam, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 235 of 2022, under Sections 363, 376(3), 323, 506 IPC & 3/4(2) POCSO Act, Police Station-Seohara, District- Bijnor, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant on 21.05.2022 and according to the FIR, on 18.05.2022 when daughter of the informant aged about 13 years was playing outside of the her home then applicant, who was her neighbour, enticed her and has taken her in his house and committed rape upon her.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and as applicant gave Rs. one lac to the informant of the case and due to this dispute of money, he has been made accused in the present matter. He further submitted that the alleged rape said to have been committed by the applicant on 18.05.2022 but FIR of the present case was lodged on 21.05.2022 i.e. after three days and this delay in lodging the FIR itself shows that after three days, informant cooked up a false story.
5. He further submitted that in the FIR, it is mentioned that from the private part of the victim blood was oozing but from the medical report of the victim, it appears that she did not sustain any injury on her private part and this fact clearly suggest that on the basis of false allegation due to previous enmity, applicant has been

made accused in the present matter.

6. He further submitted that applicant is not having any criminal history and he is in jail since 22.05.2022 i.e. for more than one and half years.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is hardly 13 years' old and she in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. stated that after tying her, applicant committed rape with her by inserting his finger in her vagina and she used to call the applicant as his *bade abba* (elder father) and therefore, considering the nature of allegation and fiduciary relationship of the applicant and victim, he should not be released on bail.

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

9. From the record, it reflects that victim was hardly 13 years' old and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant has taken her in his house and after tying her, committed rape with her by inserting his finger in her vagina.

10. Further, applicant has taken a vague defence that on the ground of non-payment of Rs. one lac, which was given by the applicant to the informant, he has been made accused in the present matter. In view of this Court, on the basis of such vague defence, statements of the victim recorded during investigation cannot be discarded at this stage.

11. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

12. Accordingly, the instant bail application is **rejected**.

13. 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 :- 29.11.2023

KK Patel