

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4665 of 2023

Applicant :- Sarfaraj

Opposite Party :- State of U.P.

Counsel for Applicant :- Dharmendra Kumar, Ganga Bhushan Mishra, Shivam Shukla

Counsel for Opposite Party :- G.A., Anil Kumar Dubey, Chandra Bhan Dubey

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Shivam Shukla, learned counsel for the applicant, Sri Anil Kumar Dubey, learned counsel for the first informant, Sri Birendra Pratap Singh learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Sarfaraj**, seeking enlargement on bail during trial in connection with Case Crime No. 512 of 2022, under section 376 I.P.C., Police Station Kandhala, District Shamli.
4. The F.I.R. of the present matter was lodged on 03.12.2022 by Pramod against the applicant alleging therein that on 03.12.2022 at about 10.15 A.M. his daughter Baby who is mentally retarded went to bring milk from the shop of the applicant where the applicant committed rape upon her. The incident was seen by him when he went in search of his daughter to the shop of the applicant he ran away. Her daughter is aged about 17 years.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that as per the supplementary medical examination report the radiological age of the victim is 19 years. She is major. The doctor did not opine any sexual assault on her. It is argued that medical evidence does not support the prosecution story. There was some dispute with regard to money between the applicant and the first informant due to which the present false case has been lodged against him. It has also been pointed out that the applicant is not having any criminal

history as stated in para 17 of the affidavit and is in jail since 03.12.2022.

6. Per contra learned counsel for the State and learned counsel for the first informant have vehemently opposed the prayer for bail and argued that the victim in her statements recorded under sections 161 and 164 Cr.P.C. has supported the prosecution case and stated of the applicant committing rape upon her. She is mentally retarded girl. The doctor medically examining her has also noted in the medical examination report. It is argued that in the supplementary medical examination report the doctor has found her internal part healed with tender on touch and has opined that same may be due to sexual assault/activity. It is argued that thus the sexual assault on the victim cannot be ruled out. It is argued that the applicant is involved in the matter.

7. After hearing the counsel for the parties and perusing the record, it is apparent that the applicant is named in the F.I.R. and statements recorded under sections 161 and 164 Cr.P.C. of the victim. Supplementary medical examination report particularly relating to the internal part of the victim does not rule out any sexual assault on her. The victim is mentally retarded girl.

8. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 13.12.2023

K.K. Maurya

(Samit Gopal,J.)