

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5616 of 2023

Applicant :- Deepu Katiyar @ Amit

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

Counsel for Applicant :- Yashpal Yadav, Lalji Yadav, Prabhat Kumar Singh

Counsel for Opposite Party :- G.A., Ravi Sahu

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in revised call.
2. Rejoinder affidavit filed on behalf of the applicant in Court today, which is taken on record.
3. Heard Shri Prabhat Kumar Singh, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.
4. The instant second bail application has been filed seeking release of the applicant on bail in Sessions Trial No.515 of 2023 (Deepu Katiyar @ Amit Vs. State of U.P.), arising out of Case Crime No.45 of 2022, under Section 376 I.P.C., Sections 3/4 POCSO Act & Sections 3(2)5A SC/ST Act, Police Station Shivrajpur, District Kanpur Nagar, during pendency of the trial in the court below.
5. Learned counsel for the applicant submits that this is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed by Co-ordinate Bench of this Court vide order dated 27.09.2022 passed in Criminal Misc. Bail Application No.37450 of 2022 and he is pressing the instant second bail application mainly on the ground that applicant is in jail since 23.03.2022 i.e. for more than one and

a half years and till date trial of the case could not be concluded.

6. He further submits that however as per the prosecution, age of the victim was thirteen years but in fact she is a major girl aged about nineteen years old and this fact is evident from her Parivar Register and this fact could not be considered by this Court while disposing off his first bail application.

7. He further submits that applicant is not having any criminal history.

8. Per contra, learned AGA opposed the prayer for bail and submits that this is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed on 27.09.2022 on merits after considering the entire facts of the case.

9. He further submits that on the basis of Parivar Register, the age of the girl cannot be ascertained under the provisions of the law and further as allegation against applicant is that he committed rape upon thirteen years old girl and therefore, even he is in jail for about one and half years then also he should not be released on bail.

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

11. This is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed on 27.09.2022 on merits after considering the entire facts of the case and from perusal of the order dated 27.09.2022 passed by this Court, it appears that with a very detailed and reasoned order, the first bail application of the applicant was dismissed by this Court.

12. However, applicant take a new plea that as per the Parivar Register, it appears that victim at the time of incident was around

nineteen years and this fact could not be placed at the time of the first bail application but I find force in the argument advanced by learned A.G.A. that under the provisions of POCSO Act, the age of the girl could only be determined as per the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and as per Section 94 of the said Act, the age of the juvenile cannot be ascertained on the basis of Parivar Register and therefore, even if in the Parivar Register of the victim, her age is mentioned as nineteen years then at this stage, it cannot be said that she was major.

13. Further, however from the record, it reflects that applicant is in jail since 23.03.2022 i.e. for last more than one and a half years but allegations against him are quite serious and as per allegation, he committed rape upon thirteen years old girl, therefore, I am not inclined to release the applicant on bail at this stage, particularly on the ground of his incarceration. Accordingly, the instant second bail application filed by the applicant - **Deepu Katiyar @ Amit** is **rejected**.

14. However, considering the fact that applicant is in jail since 23.03.2022 i.e. for more than one and a half years, trial court is directed to conclude the trial of the case within a period of nine months from the date of production of a certified copy of this order strictly as per the provisions of Section 309 Cr.P.C. and Section 35 POCSO Act, without granting any unnecessary adjournments to either of the parties, if there is no legal impediments.

Order Date :- 30.11.2023
Zafar