

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8680 of 2023

Applicant :- Gudluck @ Utkarsh

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

Counsel for Applicant :- Sher Bahadur Yadav, Chandra Shekhar Mishra

Counsel for Opposite Party :- G.A., Akhilesh Kumar Sinha

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Chandra Shekhar Mishra, learned counsel for the applicant, Sri Akhilesh Kumar Sinha, learned counsel for the informant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 66 of 2022, under Sections 376-D, 506 IPC & 3/4 POCSO Act, Police Station- Tahbarpur, District- Azamgarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and co-accused Neeraj on 27.04.2022 and according to the FIR, on 19.04.2022 applicant called the victim aged about 13 years at his home and thereafter applicant and co-accused Neeraj committed rape upon her.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and FIR of the present case was lodged after more than a week and this inordinate delay in lodging the FIR itself shows that on the basis of false allegation, applicant has been made accused in the present matter alongwith co-accused Neeraj.
6. He further submitted that however, victim in her both the statements recorded during investigation made allegation of rape against the applicant but her both the statements appears to be quite unconvincing. He further submitted that it also quite

improbable that applicant and co-accused Neeraj could commit rape upon the victim in presence of her friend. He further submitted that when the statement of the friend of the victim was recorded under Section 161 Cr.P.C. then she changed place of incident and stated that rape was committed upon the victim in the bathroom and not in the kitchen and this material contradiction in statement of both the witnesses shows that entire story is totally false and baseless. He further submitted that only due to *village party-bandi*, applicant has been made accused in the present matter.

7. He further submitted that applicant is not having any criminal history and he is in jail since April, 2022 i.e. for last more than one and half years.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case of gang rape and victim is hardly 13 years' old girl and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant and if there are minor contradictions in the statements then on the basis of such minor contradictions at this stage, her statement cannot be discarded. He further submitted that in cases like present one, delay of one week, hardly matters.

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

10. However, it appears that FIR of the present case was lodged after about a week and there are some contradictions in the statements of the victim and her friend, who alleged to have present at the spot but as far as substratum of allegation of rape is concerned she also supported the version of the victim. Further, in rape case, delay in FIR is quite natural.

11. Further, applicant is hardly 13 years' old girl and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically alleged that applicant and co-accused Neeraj committed rape upon her.

12. Further, applicant failed to bring any good reason for his false implication, however, he tried to explain the reason of his false implication in paragraph no. 16 of the affidavit but from the perusal of the paragraph no. 16, it appears that it is vague in nature and on the basis of such vague averment made by the applicant, neither statement of the victim nor her friend should be discarded

at this stage.

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

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **rejected**.

15. 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.

16. However, considering the fact that applicant is in jail for more than one and 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 certified copy of this order, strictly as per the provisions of Section 35 POCSO Act and 309 Cr.P.C. on day-to-day basis without granting any unnecessary adjournment to either of the parties, if there is no legal impediment.

Order Date :- 7.12.2023

KK Patel