

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8990 of 2023

Applicant :- Durga Jamadar

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

Counsel for Applicant :- Arvind Srivastava, Anil Kumar Pandey

Counsel for Opposite Party :- G.A., Anil Kumar Sonker, R.U. Rinki Renu

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Anil Kumar Pandey, learned counsel for the applicant, Ms. R.U. Rinki Renu, learned Panel Lawyer of the High Court Legal Services Committee and Sri Ajai Singh, learned A.G.A.-I for the State.

3. The notice was issued to the opposite party no. 3/first informant vide order dated 24.02.2023. As per the counter affidavit dated 25.04.2023 and as per office report dated 24.03.2023 notice has been served on the first informant. Despite service of notice no one appears for the first informant.

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Durga Jamadar**, seeking enlargement on bail during trial in connection with Case Crime No. 1070 of 2022, under sections 376(2)DA, 376(2) L, 376(3) I.P.C. and 5/6 POCSO Act, Police Station Kotwali Nagar, District Banda.

5. F.I.R. of the present matter was lodged on 21.11.2022 by Renu Gupta the Deputy Supervisor (on night duty) emergency ward district hospital Banda against unknown persons alleging therein that a girl who was mentally disturbed appears to have been sexually exploited. It is stated that a physical and mentally retarded girl was admitted in the emergency ward in the hospital by G.R.P. police on 18.11.2022 at about 5.00 a.m. who was shifted in the emergency ward bed no. 16. The girl was found in a semi nude condition in the bathroom on 20.11.2022 at 3.00 A.M. and there was possibility of her being sexually assaulted, a report be lodged and action be taken.

6. It is argued by learned counsel for the applicant that the applicant has been falsely implicated in the present case. It is argued that the applicant is not named in the F.I.R. The implication of the applicant in the present case is on the basis of suspicion only. The applicant is a class IV employee in the hospital. It is argued that the CMS of the hospital saw the CCTV footage and had cast suspicion upon the applicant. Further Sub Inspector Dharmendra Singh also on viewing the said CCTV footage had stated that the CMS and the staff of the hospital have cast suspicion upon the applicant. It is argued that there is no forensic lab report to substantiate the veracity of the said CCTV footage. It is argued that the charge sheet in the matter has been submitted and as such there are no chances of the applicant absconding and not cooperating in the investigation. It has also been pointed out that the applicant is not having any criminal history as stated in para 22 of the affidavit and is in jail since 22.11.2022.

7. Per contra learned counsel for the State and learned Panel Lawyer of the High Court Legal Services Committee have vehemently opposed the prayer for bail and argued that the victim is aged about 13 years and deaf and dumb girl. It is argued that the implication of the applicant in the present matter is on the basis of his identification in the CCTV footage, wherein, he was seen carrying the victim in his lap. The CMS of the hospital and other employees of the hospital clearly identified the applicant in the said CCTV footage. It is argued that the doctor conducting the medical examination of the victim found her hymen to be ruptured and torn which also corroborates with the prosecution. It is argued that as such the bail application of the applicant be rejected.

8. After hearing the counsel for the parties and perusing the record, it is apparent that the applicant is an employee in the hospital, where a 13 years old deaf and dumb and mentally disturbed girl was admitted by the G.R.P. Police. The applicant was seen carrying the girl in his lap after which the said incident is stated to have occurred. The CCTV footage of the place of occurrence clearly shows the applicant doing such.

9. Looking to the facts and circumstances of the case, no ground for bail is made out, hence, the bail application is **rejected**.

Order Date :- 21.11.2023

K.K. Maurya

(Samit Gopal,J.)