

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13442 of 2023

Applicant :- Faheem @ Kayyum

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

Counsel for Applicant :- Rajesh Yadav, Mukul Yadav, Ved Prakash Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. As matter also pertains to provisions of POCSO Act, therefore, notices were issued to the informant of the case i.e. O.P. No. 4. As per the office report dated 11.07.2023, notice has been served to the informant through her husband. Sri Suresh Bahadur Singh, AGA for the State also apprised the Court that on 22.02.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri V.P. Mishra, learned counsel for the applicant and Sri Suresh Bahadur Singh, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 119 of 2022, under Section 376-AB IPC & 5/6 POCSO Act, Police Station- Katghar, District- Moradabad, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and according to the FIR, applicant has taken six years' old daughter of the informant and thereafter made sexual assault upon her and when son of the informant informed her then informant arrived at spot and found that applicant, after removing his lower and lower of her daughter, was lying upon her and was committing rape with her. It is further mentioned in the FIR that applicant was arrested at spot and he was handed over to the police.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and applicant is the neighbour of the informant and informant wanted to grab his property, therefore, on the basis of false allegation, he has been made accused in the present matter. He further submitted that although, there is allegation of rape against

the applicant with the daughter of the informant aged about 6 years but doctor did not find any injury on her body.

6. He further submitted that applicant is not having any criminal history and he is in jail since 04.03.2022.

7. Per contra, learned AGA opposed the prayer for bail and submitted that there is allegation of rape against the applicant and he was arrested at spot while he was committing rape with the daughter of the informant aged about 6 years, therefore he should not be released on bail.

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

9. Considering the fact that victim was hardly 6 years' old girl and applicant was arrested at spot while he was committing rape with her, in my view, applicant is not entitled to be released on bail.

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

11. 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 :- 3.11.2023

KK Patel