Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18572 of 2022

Applicant :- Deepak
Opposite Party :- State Of U.P And 3 Others
Counsel for Applicant :- Hemant Sharma
Counsel for Opposite Party :- G.A.,Rewti Raman Patel

Hon'ble Samit Gopal,J.

1. Heard Sri Hemant Sharma, learned counsel for the applicant, Sri Rewti Raman Patel, learned counsel for the first informant and Sri Bade Lal Bind, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Deepak**, seeking enlargement on bail during trial in connection with Case Crime No. 635 of 2021, under Section 363, 376 I.P.C. and 3/4 POCSO Act, Police Station Anoop Shahr, District Bulandshahr.

3. The first information report of the present matter was lodged on 11.11.2021 by Gambhir Singh against an unknown person alleging therein that on 11.11.2021 his daughter went to the school at about 8 a.m. and in the lunch hours stating that she is unwell and wants to got home came out. She did not reach home. She was having a mobile phone and used to talk to someone after which the mobile phone was taken from her and switched off. She was not having any other phone.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the applicant is not named in the first information report. It is further argued that subsequently the victim was recovered on 04.12.2021 after which she gave her statement recorded under Section 161 Cr.P.C. and stated of going with the applicant and living with him as his wife. It is argued that subsequently in the statement of the victim recorded under Section 164 Cr.P.C. she states of the applicant committing rape upon her. It is argued that the victim is a consenting party. The medical examination does not show any force being exerted to her as the doctor did not find any injury either internally or externally. The applicant has no criminal history as stated in para 19 and is in jail since 05.12.2021.

5. *Per contra,* learned counsel for the first informant and learned counsel for the State have vehemently opposed the prayer for bail and argued that the date of birth of the victim is 01.01.2006 and as such on the date of incident which is 11.11.2021 she was aged about 15 years & 10 months and as such was a minor. It is argued that the applicant is named in statements of the victim recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. He is stated to have sexually assaulted her. Since the victim was a minor her consent cannot be looked at this stage.

6. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is named in the statements of the victim recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. The victim is a minor as per the school records. The consent of a minor is of no worth. No ground for bail is made out.

7. Looking to the facts and circumstances of the case, this Court does not find it a fit case for bail, hence, the bail application is **rejected.**

Order Date :- 21.11.2023
AS Rathore

(Samit Gopal,J.)

Digitally signed by :-
ABHISHEK SINGH RATHOR
High Court of Judicature at Allahabad