

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19255 of 2023

Applicant :- Nitesh Gond Alias Kallu

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

Counsel for Applicant :- Mohd. Naushad Siddiqui, Bipin Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Suresh Bahadur Singh, learned AGA for the State apprised the Court that on 24.04.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Mohd. Naushad Siddiqui, 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. 180 of 2022, under Sections 376 IPC & 5m/6 POCSO Act, Police Station- Bhatparrani, District- Deoria, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 29.11.2022 against applicant and according to the FIR, applicant is the neighbour of the informant and informant witnessed that he was running from her house and when she made inquiry from her daughter aged about four and half years then she informed that applicant used his penis and when she opened the lower of her daughter then found that her daughter informed her correctly.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and informant and applicant are collaterals and some dispute with regard to property is pending between them and only due to this reason, he has been made accused in the present matter.

6. He further submitted that however, victim in her statement recorded under Section 161 Cr.P.C. stated that applicant inserted his penis in her vagina but her medical report does not support her allegation and when her statement was recorded under Section 164 Cr.P.C. then she did not stated that applicant ever inserted his male organ in her vagina and only stated that applicant only touched his penis upon her vagina.

7. He further submitted that applicant is not having any criminal history and he is in jail since 30.11.2022 i.e. for last more than a year.
8. Per contra, learned AGA opposed the prayer for bail and submitted that victim is hardly four and half years' old and applicant is her neighbour and he misused his position and when her mother caught him then he ran away and subsequently she found that he did some indecent activities with her daughter and statement of the victim recorded under Section 164 Cr.P.C. also corroborates the version of the FIR, therefore, considering the nature of allegation, age of the victim, applicant should not be released on bail.
9. I have heard learned counsel for the parties and perused the record of the case.
10. However, applicant is in jail since 30.11.2022 i.e. for last more than a year but he is the neighbour of the victim, who is hardly four and half years' old and according to the mother of the victim, applicant after seeing her, ran away and at that time he was near her daughter.
11. From the statement of the informant recorded under Section 161 Cr.P.C., which was produced by learned AGA, it reflects that after removing the lower of the victim, informant came to know that applicant ejaculated, therefore, considering the nature of allegation, age of the victim, I am not inclined to release the applicant on bail.
12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **rejected**.
13. 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.
14. However, considering the fact that applicant is in jail for last more than a years, trial court is directed to conclude the trial of the case within a period of eight 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. in accordance with law, if there is no legal impediment.

Order Date :- 2.12.2023

KK Patel