

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27988 of 2023

Applicant :- Sharafat

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

Counsel for Applicant :- Pradeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Pradeep Kumar, learned counsel for the applicant, Sri Shashi Kant Pandey, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Sharafat, seeking enlargement on bail during trial in connection with Case Crime No.809 of 2022 under Section 328, 376 IPC and Section 3/4 POCSO Act, registered at Police Station Gajraula, District Amroha.
4. Notice was issued to the first informant vide order dated 11.7.2023. As per office report dated 07.8.2023 a report has been received from C.J.M. concerned dated 28.7.2023 stating therein that notice has been served upon the first informant personally but no one appears on behalf of first informant despite service of notice.
5. The FIR of the matter was lodged on 11.12.2022 by Kausar Jahan against the applicant on the basis of application moved under Section 156(3) Cr.P.C. alleging therein that on 14.6.2022 at about 1 p.m. when her daughter having date of birth 26.3.2010 was alone in the house, the applicant who is her neighbour came inside the house and gave her daughter some intoxicated mixed rice forcibly to eat after which he committed rape on her. When she came back home, she found her daughter lying unconscious in naked position. She took her daughter to the doctor where she was given treatment.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that applicant had given an application to the Chief Minister of Uttar Pradesh and the Superintendent of Police, Amroha on 18.6.2022

on the complaint portal of the Government stating of the first informant being a lady of bad character and that he was previously implicated by her in a case of rape after which she took money and got it settled after which the applicant was challaned under Section 151/107/116 Cr.P.C. It is argued that subsequently the FIR has been lodged after about six months by falsely implicating the applicant. Although the victim has named the applicant and stated of his committing rape upon her in her statement under Section 161 and 164 Cr.P.C. but the same is false version as the medical examination report of the victim does not show any injury either on her body or on her private part. The implication of the applicant is false and with malafide intention. It has also been pointed out that the applicant is not having any criminal history as stated in para 21 of the affidavit and is in jail since 7.2.2023.

7. Per contra learned counsel for the State vehemently opposed the prayer for bail and argued that the victim is aged about 15 years as has been opined by the C.M.O concerned. The applicant is named in the FIR, in the statement of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. There are allegations of committing rape by the applicant upon the victim, as such bail application of the applicant be rejected.

8. After hearing the counsel for the parties and perusing the record, it is apparent that the victim is minor aged about 15 years. The applicant is named in the FIR, in the statement of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. and there are allegations of committing rape by the applicant upon the victim. In so far as the previous application of the applicant given on portal of the Government is concerned, the same is against the first informant. The victim in no manner would have joined the hands at this age for falsely implicating the applicant and also making her involved in a matter of rape.

8. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is **rejected**.

(Samit Gopal, J.)

Order Date :- 18.10.2023
Gaurav Kuls