

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34906 of 2019

Applicant :- Krishna @ Balram

Opposite Party :- State of U.P.

Counsel for Applicant :- Jata Shankar, Vijai Kumar Tiwari, Vijay Prakash Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. From the record, it reflects that notice has already been served to informant on 20.8.2023. Despite service of notice, none appeared on behalf of the informant.
2. Heard Ms. Nandini Pandey and Sri Santosh Singh, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 21 of 2019, under Sections 376, 323, 504, 506 IPC and 5/6 POCSO Act, Police Station Trilokpur, District Siddharth Nagar during pendency of the trial.
4. FIR of the present case was lodged against applicant and according to the FIR applicant committed rape with the daughter of the informant aged about six years while she was playing.
5. Learned counsel for the applicant submits that due to land dispute applicant was made accused in the present matter and informant during cross-examination did not support the prosecution case and her statement recorded during trial has been annexed as S.A.5 to the supplementary affidavit.
6. She further submits that however victim is hardly four years old

girl but her medical examination does not support the prosecution case. However, she submitted that some small amount of bleeding was present at her anal region but it can be even present due to other reasons like constipation etc.

7. She further submits that applicant is not having any previous criminal history and he is in jail since 19.3.2019 i.e. for more than 4-1/2 years.

8. Per contra, learned AGA opposed the prayer for bail and submits that victim is hardly four years old girl but could not dispute the fact that informant of the case during trial did not support the prosecution case and applicant is in jail since 19.3.2019.

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

10. However from the record, it reflects that victim is hardly four years old girl and doctor noted bleeding around her anal region but no bleeding or injury was noted by doctor around her vagina and argument advanced by learned counsel for the applicant that the bleeding may be present in anal region for number of other reasons can not be brushed aside at this stage.

11. Further, during trial, when informant appeared before trial court then in her cross examination she did not support the prosecution case. Further applicant is not having any previous criminal history and he is in jail since 19.3.2019 i.e. for last more than 4-1/2 years.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

14. Let the applicant-Krishna @ Balram be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. 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 :- 28.11.2023

Aiman