

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37635 of 2023

Applicant :- Rajan Verma

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

Counsel for Applicant :- Buddha Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Buddha Prakash, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Sumit Yadav seeking his enlargement on bail in Case Crime No. 165 of 2023, under sections 376 IPC (A)(B) I.P.C. and Section 5M/6 of POCSO Act and Section 3 (2)5 of SC/ST Act, Police Station-Khukhundoo, District Deoria during the pendency of trial.

Perused the record.

At the very outset, learned, A.G.A submits that notice of present application for bail has been served upon first informant/opposite party-2. However inspite of service of notice, no one has put in appearance on behalf of opposite party-2 to oppose this application for bail.

Record shows that in respect of an incident which is alleged to have occurred on 13.6.2023, a prompt F.I.R. dated 13.6.2023 was lodged by first informant Kamlavati Devi and was registered as Case Crime No. 165 of 2023, under sections 376 IPC (A)(B) I.P.C. and Section 5M/6 of POCSO Act and Section 3 (2)5 of SC/ST Act, Police Station- Khukhundoo, District Deoria. In the aforesaid F.I.R. applicant- Rajan Verma has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that applicant has committed aggravated sexual assault upon daughter of first informant aged about 8 years.

At the very outset, learned A.G.A. submits that during course of investigation, Investigating Officer recovered the date of birth of the prosecutrix recorded in the institution first attended by her which is 4.4.2014. The occurrence giving rise to present proceedings has occurred on 13.6.2023. As such, prosecutrix was aged about 9 years and 2 months on the date of occurrence. Moreover the prosecutrix in her statement under section 161/164 Cr.P.C. has clearly and categorically supported the F.I.R. Referring to the judgement of Supreme Court in **X(Minor) Vs State of Jharkhand and Anr., 2022 Live Law (SC) 194**. he submits that since prosecutrix is below 16 years of age, therefore applicant does not deserve any indulgence by this Court.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the prosecutrix in her statement under section 161/164 Cr.P.C. has clearly and categorically supported the F.I.R. the medical evidence/internal medical examination report of the prosecutrix clearly supports the F.I.R. as injury was found in the private part of the prosecutrix, the charge-sheet has already been submitted against applicant on 6.7.2023, the prosecutrix being a small child aged about 9 years, the judgement of the Supreme Court in **X(minor) Supra** therefore, irrespective of the submissions urged by learned counsel for applicant in support of present application for bail, this Court does not find any good ground to enlarge the applicant on bail.

Resultantly, the bail application fails and is liable to be rejected

It is accordingly rejected.

Order Date :- 13.10.2023

Arshad