

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48084 of 2022

Applicant :- Ganesh @ Gopal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Hanuman Deen Verma

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Hanuman Deen Verma, learned counsel for the applicant, Sri Triveni Saran Rai, 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-Ganesh @ Gopal, seeking enlargement on bail during trial in connection with Case Crime No.282 of 2022, under Sections 376-D, 504, 313 IPC and 5/6 POCSO Act, registered at Police Station Mahuli, District Sant Kabir Nagar.
4. The FIR of the matter was lodged on 18.8.2022 by Ram Bhawan Maurya against the applicant and Manoj alleging therein that his daughter aged about 14 years was studying in class 4th. Earlier his daughter while going to school was caught by the accused persons who committed rape upon her due to which she became pregnant. When he came to know of it, he asked Manoj about it who abused him. Due to shame, he got the said pregnancy aborted in the hospital and did not get a report lodged. Now he is lodging a report.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that although in the FIR general role has been assigned to the applicant and co-accused Manoj of committing rape upon the victim but the victim in her statement under Section 161 Cr.P.C. and 164 Cr.P.C. has stated that the applicant sexually assaulted on her only once whereas co-accused Manoj committed sexual assault on her repeated times. The FIR has been lodged after a great delay since the date and time of the incident is missing but reading of the same would go to show that when the victim became pregnant, the FIR has been lodged. It is argued that the victim in her statements recorded during investigation has stated of the incident being committed around six months back but there was no report or complaint either by her or her family members to the police or any authority. It is argued that charge sheet in the matter has been submitted against the applicant and co-accused Manoj and as such there are no chances of the applicant tampering with the evidence or not cooperating with investigation. It is argued that co-accused Manoj has been granted bail by coordinate Bench of this Court vide order dated 1.6.2023 passed in Criminal Misc.

Bail Application No.6006 of 2023, copy of the same is annexed as Annexure No.S.A-3 to the supplementary affidavit dated 23.8.2023. 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 18.8.2022.

6. Per contra learned counsel for the State vehemently opposed the prayer for bail and argued that the present case is a case of gang rape. The victim has been stated to be about 14 years of age in the FIR. She has disclosed her age as 14 years in her statement under Section 161 Cr.P.C. The C.M.O concerned has opined her age to be about 15 years and even as per the radiological opinion her age has been opined to be 15 years in the supplementary medical report. The victim is a minor. There is no reason for false implication of the applicant. The first informant has specifically narrated the reason for lodging of the FIR with delay. The applicant is named in the FIR, in the statements of the victim u/s 161 and 164 Cr.P.C., hence bail application of the applicant be rejected.

7. After hearing the counsel for the parties and perusing the record, it is apparent that the applicant is named in the FIR, in the statements of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. There is allegation of rape committed upon the victim. The first informant has given reason for lodging the FIR at a belated stage. Even otherwise in matters under Sections 376 IPC and especially relating to sexual offences, delay may not have very clinching effect, it would depend on facts of each and every case. The victim has been opined to be 15 years of age by the C.M.O concerned and in the supplementary medical report. In so far as parity of granting bail to co-accused Manoj is concerned, the same is not binding on the Court. The same may have a persuasive value. The same has been held the same in detail in **Criminal Misc. Bail Application No.42092 of 2020 (Dheeraj Kumar Shukla Vs. State of U.P.)** in the order dated 06.07.2021 in paragraph 17.

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 :- 16.10.2023
Gaurav Kuls