

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40907 of 2023

Applicant :- Danveer

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

Counsel for Applicant :- Azhar Hussain, Byas Kumar Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. This is the second bail application. First bail application was disposed of vide order dated 2.5.2023 by a detailed order. Relevant portion thereof is mentioned hereinafter:

"7. In the present case, age of victim according to educational document is about 14 years whereas according to ossification report her age is about 17 years. Witness has not stated about allegation of rape in her statement recorded under Section 161 Cr.P.C., however, she mustered confidence and stated truth before Magistrate in her statement recorded under Section 164 Cr.P.C. and also stated that applicant has committed a wrong thing with her which is prima facie corroborated from her medical examination wherein hymen was found freshly torn. In these circumstances, there is merit in argument of learned Brief Holder that since applicant has prior acquaintance with victim, therefore, in case of bail there is likelihood that he may influence victim in trial, therefore, the prayer for bail is rejected at this stage.

8. However, the application is disposed of with direction to Trial Court to record statement of victim, if not already recorded, within a period of three months from today, if there is no other legal impediment. Thereafter applicant is at liberty to file fresh application for bail before Trial Court."

2. Heard Sri Azhar Hussain, learned counsel for the applicant and perused the record.

3. The applicant has approached this Court by way of filing the present Criminal Misc. Bail Application seeking enlargement on bail in Case Crime No.388 of 2022, under Sections 354, 354-B and 376 I.P.C. and under Section 3/4 POCSO Act, 2012, Police

Station-Gabhana, District-Aligarh

4. In pursuance of order passed by this Court, a report has been submitted by the learned Special Judge (POCSO Act) that out of six prosecution witnesses, four have been examined and the matter is at the fag end.

5. This Court has asked the Trial Court to record statement of victim, if not already recorded, within a period of three months from today,

6. Learned counsel for the applicant submits that in her short cross examination, victim has not been able to point out the date and place of occurrence and has not been able to dispute that in the examination-in-chief, she has completely supported the case of prosecution.

7. In the aforesaid circumstances, the Court cannot consider the cross-examination of victim as a Trial Court to the extent that no case is made out against the applicant.

8. As referred above, since the trial is at the fag end, therefore, at this stage, there is no subsequent development to allow this second bail application.

9. Second bail application is **rejected**. However, Trial Court is directed to conclude the trial within a period of four months.

Order Date :- 18.10.2023

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