

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48090 of 2022

Applicant :- Gajendra Giri

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

Counsel for Applicant :- Brij Raj Singh

Counsel for Opposite Party :- G.A.,Dheeraj Kumar Tiwari

Hon'ble Sameer Jain,J.

1. None appeared on behalf of the informant even in revised call, however, learned AGA for the State is present.
2. Heard Sri Brij Raj Singh, learned counsel for the applicant and Sri Ghanshyam Mishra, learned brief holder for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 155 of 2022, under Sections 452, 376(3), 506 IPC & 3/4 POCSO Act & 3(2)(5) SC/ST Act, Police Station- Ahmadgarh, District- Bulandshahr, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and according to the FIR, applicant in the absence of parents of the victim, committed rape with her. It is further mentioned in the FIR that age of the victim is 15 years.
5. Learned counsel for the applicant submitted that on the basis of false allegation of rape, applicant has been made accused in the present matter and he is a disabled person and he was under continuous medical treatment and it is hard to believe that a person, who is 50% disabled, can commit rape with the victim.
6. He further submitted that actually applicant is having a grocery store and some dispute with regard to payment arose between applicant and informant, therefore, FIR of the present case was lodged against the applicant.
7. He further submitted that although, as per the allegation, victim is hardly 15 years' old girl but during her medical, doctor did not find any injury on her body.

8. He further submitted that applicant is not having any criminal history and he is in jail since 08.07.2022 i.e. for more than a year.

9. Per contra, learned AGA opposed the prayer for bail and submitted that victim is hardly 15 years' old girl and in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. she categorically stated that applicant committed rape with her.

10. He further submitted that all the medical documents of the applicant are of the year 2013 and even according to the disability certificate of the applicant, he is 50% disabled for the purpose of his working, therefore, at this stage, it cannot be said that applicant was unable to commit rape.

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

12. From the record, it reflects that victim is aged about 15 years and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

13. Although, from the record, it also reflects that applicant is having 50% disability with regard to his working but from his disability certificate, it could not be reflected that due to his disability he was unable to commit rape with the minor girl aged about 15 years' old, especially considering the fact that he is a grown up man aged about more than 30 years.

14. Further, applicant could not bring any good and cogent reason for his false implication and ground taken by the applicant in his defence appears to be vague and general and merely on the basis of such ground, the statement of the victim cannot be disbelieved at this stage.

15. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

16. Accordingly, the instant bail application is ***rejected***.

17. 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.

18. However, considering the fact that applicant is in jail for more

than a year, trial court is directed to conclude the trial of the case within a period of eight months from the date of production of certified copy of this order, strictly as per the provisions of Sections 309 Cr.P.C. and 35 POCSO Act, if there is no legal impediment.

Order Date :- 17.10.2023

KK Patel