

Court No. - 85

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41604 of 2023

Applicant :- Gyanendra Gaur

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

Counsel for Applicant :- Vinay Kumar Singh, Mahabir Yadav

Counsel for Opposite Party :- G.A., Santosh Kr. Singh Paliwal

Hon'ble Mayank Kumar Jain, J.

Heard learned counsel for the applicant, learned A.G.A. for the State and learned counsel for the informant and perused the record.

The present second bail application has been filed on behalf of applicant in Case Crime No.206 of 2022, under Sections 363, 376D, 506, 323 of IPC and Section 5/6 of POCSO Act, Police Station Gagaha, District Gorakhpur with the prayer to enlarge the applicant on bail. The first bail application of the applicant was rejected vide order dated 20.01.2023 passed in Criminal Misc. Bail Application No.38893/2022.

The ground taken by learned counsel for the applicant is that offence under Section 376D of IPC is not made out against the applicant as per the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. It is also submitted that as per the medical examination the age of the prosecutrix was determined to be 18 years, therefore, provisions of POCSO Act are also not attracted. It is further submitted that applicant is languishing in jail since 12.07.2022 having no criminal history and that in case he is released on bail, she will not misuse the liberty of bail and will cooperate in trial.

Per contra, the learned Additional Government Advocate assisted by learned counsel for the informant has opposed the prayer for grant of bail and argued that no new ground has been taken by the applicant for granting him bail. All the aspects which are argued by learned counsel for the applicant have already been considered during the disposal of first bail application of the applicant. It is submitted that chargesheet under Section 376D along with other section 363 of IPC, Section 67 of I.T. Act and Section 5/6 of POCSO Act and Section 3(2)(V) of SC/ST Act has been submitted

against the applicant against which cognizance has been taken.

Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence and gravity of the offence, without expressing any opinion on merits of the case, the Court is of the view that the applicant is not entitled for the bail, therefore, the present second bail application is ***rejected***.

Any observation made above shall not be treated as any finding on the merit and shall not prejudice the trial.

Order Date :- 29.11.2023

Mohit