

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42346 of 2023

Applicant :- Ankur Tiwari @ Ankul Tiwari And Another

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

Counsel for Applicant :- A Kumar Srivastava, Aakansha Singh Chandraul, Manju Pandey

Counsel for Opposite Party :- G.A., Abhilasha Singh

Hon'ble Dr. Gautam Chowdhary, J.

1. Pursuant to the earlier order of this Court dated 04.10.2023, a sealed envelop has been received by this Court. The seal was opened in the Court, which contains the ossification test of the victim. The ossification test shows that the victim is aged about 17 years.

2. Heard Ms. Manju Pandey, learned counsel for the applicants, learned A.G.A. for the State and perused the material on record.

3. Learned counsel for the applicants contends that the applicants have been falsely implicated in the instant case. Learned counsel for the applicants has contended that according to the F.I.R. version, the victim had gone to purchase vegetables on 10.12.2022 and she is said to have been enticed away by the applicants and other co-accused persons but no missing report was registered by the informant. It is further contended that when the victim was recovered on 17.04.2023 even then the F.I.R. was not lodged and that the F.I.R. was lodged only on 28.04.2023 after a lapse of more than four months without there being any plausible explanation of such an inordinate delay. He further submits that the victim in her statement recorded under Section 161 Cr.P.C. has stated that on the pretext of meeting of the victim with her mother, the co-accused Amit Tiwari took her to his house, where her mother was present and on one day, the the accused Amit Tiwari came and committed rape with her, thereafter on the next day, the applicants, who are real brother has also committed rape with her. Learned counsel further submits that as per naksha nazari, the house in which the

alleged offence has been committed consists of two rooms only, where the entire family of the applicants i.e. mother, wife of applicant-Sunil Tiwari and his three children are residing, thus it is not possible for the applicants, who are real brother to commit such heinous offence together in a joint family. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 04.05.2023.

4. Learned AGA for the State could not satisfactorily dispute the aforesaid submissions from the record but has opposed the bail prayer of the applicants.

5. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicants has made out a case for bail. Hence the bail application is allowed.

6. Let applicants **Ankur Tiwari @ Ankul Tiwari and Sunil Tiwari** involved in Case Crime No.266 of 2023 under Sections 342, 376-D, 120-B I.P.C., and Section 6 of Dowry Prohibition Act, Police Station Kotwali Karwi, District Chitrakoot, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

II. The applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

III. In case, the applicants misuses the liberty of bail and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

IV. The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against them in accordance with law.

7. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity, status and residence proof of the applicants and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 18.10.2023

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