

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43443 of 2023

Applicant :- Narendra Kashyap

Opposite Party :- State of U.P.

Counsel for Applicant :- Prashant Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Prashant Singh, learned counsel for the applicant and/Sri Imran Khan, learned AGA, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.208 of 2023, under Sections 376-D IPC, Police Station Shivli, District Kanpur Dehat during pendency of the trial.
3. FIR of the present case was lodged by villagers against the applicant and co-accused Ramkesh and according to the FIR, applicant along with co-accused Ramkesh committed rape with a mentally retarded girl.
4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and only due to enmity with regard to patta of a land of gram sabha he has been roped in the present matter by the informant of the case.
5. He further submits that as victim was a mentally retarded girl, therefore, she was unable to give any statement and in spite of the help of interpreter her statement during investigation could not be recorded.
6. He further submits that although Sachin and Shivam were claimed themselves to be eye witnesses but their testimony appears to be shaky and does not inspire any confidence.

7. He further submits that although it is a case of gang rape upon a mentally retarded lady but in spite of that at the time of medical examination no injury was found on her body and even according to the Doctor no opinion with regard to rape can be given.

8. He further submits that applicant is a young villager and he is not having any previous criminal history and in the present matter he is in jail since 14.6.2023.

9. Per contra, learned AGA opposed the prayer for bail and submits that there are serious allegations against the applicant and co-accused Ramkesh and two witnesses witnessed that applicant and another accused had taken the victim, who was mentally retarded and committed rape with her and applicant could not bring any enmity with those eye witnesses and, therefore, considering the nature of allegation and mental condition of the victim applicant should not be released on bail.

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

11. It is a case in which as per allegation applicant along with co-accused committed rape with a mentally retarded lady and due to her mental condition in spite of the help provided by the interpreter her statement could not be recorded during investigation but in the instant matter Sachin and Shivam both were alleged eye witnesses and they have stated that they witnessed the applicant and co-accused when they were taking the victim with them and thereafter they also witnessed that applicant and co-accused committed rape with her. They further stated that when they arrived at spot then applicant and co-accused threatened them.

12. However, as per Doctor, no injury was found on the body of

the victim and Doctor was not in a position to give definite opinion with regard to rape but as victim is a mentally retarded adult lady aged about 25-26 years old, therefore, it is not necessary that in the incident she must sustained any injury.

13. Further, applicant failed to bring any enmity with eye witnesses Sachin and Shivam.

14. Therefore, considering the facts and circumstances of the case, nature of allegation and severity of punishment, in my view, applicant is not entitled to be released on bail.

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

16. 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.

Order Date :- 27.10.2023

SKM