

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44636 of 2023

Applicant :- Diyam @ Shivam

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

Counsel for Applicant :- Mohd Javed Akhter, Mohd. Monis

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Mohd. Monis, learned counsel for applicant and Sri Paritosh Malviya, learned AGA for State.

2. This is second bail application filed by applicant-Diyam alias Shivam in Case Crime No. 292 of 2022, under Sections 376AB, 504, 506 IPC and 5/6 POCSO Act, Police Station Khaga, District Fatehpur. First bail application for applicant was rejected vide order dated 08.05.2023 by giving following reasons:

“7. In the present case, applicant is a neighbor of victim aged about 4 years, who has given a specific statement recorded under Sections 161 and 164 Cr.P.C. and made specific allegations against applicant that he has committed the aforesaid offence.

8. In these circumstances considering the seriousness of the offence as well as the age of victim, no case of bail is made out.

9. Accordingly, the bail application is rejected. However, Trial Court shall take all endeavour to record the statement of victim preferably within a period of three months from today.”

3. This Court passed following order on 19.10.2023:

“This is the second bail application.

First bail application was rejected on 8.5.2023.

Mohd. Monis, learned counsel for the applicant submits that thereafter statement of victim has been recorded, however, she has not supported the case of prosecution and turned hostile.

In these circumstances, before entering into merits of the case, Trial Court shall submit a report in regard to present status of trial which shall include number of proposed prosecution witnesses, number of

witnesses examined and the likelihood period under which trial could be concluded.

List on 23.11.2023.

Registrar (Compliance) to take steps.”

4. In pursuance of above order, Trial Court has submitted report dated 02.11.2023 that out of six proposed prosecution witnesses two have been examined and trial can be concluded within nine months.
5. Learned counsel for applicant has reiterated the above submission.
6. Learned AGA appearing for State submits that during examination-in-chief victim has not given any answer to relevant questions and when statement under Section 164 Cr.P.C. was shown to her, she has specifically stated that I have stated truth therein.
7. In aforesaid circumstances even the victim was declared hostile though it was not necessary and since she has supported her statement recorded under Section 164 Cr.P.C., at this stage it cannot be said that evidence of victim is not sufficient to prove the case against applicant.
8. The bail application is accordingly rejected.
9. Trial Court is directed to conclude trial expeditiously, preferably within the period as proposed in report.
10. Registrar (Compliance) to take steps.

Order Date :- 23.11.2023

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