

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45060 of 2023

Applicant :- Ramesh

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

Counsel for Applicant :- Akhilesh Kumar Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Akhilesh Kumar Ojha, learned counsel for applicant, learned AGA for State and Mrs. Abhilash Singh, Advocate for High Court Legal Services Committee.

2. This is second bail application filed by applicant-Ramesh in Case Crime No. 117 of 2022, under Section 376 IPC and 5M/6 POCSO Act, Police Station Juhi, District Kanpur Nagar. First bail application of applicant was rejected vide order dated 26.04.2023 by giving following reasons:

"8. In the present case, victim is about 7 years old a minor girl who remained consistent in her statements recorded under Sections 161 and 164 Cr.P.C. that applicant has committed an offence under Section 376 I.P.C. by inserting a part of his body (a finger) in her private parts.

9. Argument of learned counsel for the applicant that incident appears to be improbable does not hold feet as at this stage, this Court cannot ignore the statements of victim recorded under Sections 161 and 164 Cr.P.C. which remained consistent against the applicant. Even the wife of applicant has heard voice of crying of victim, therefore, the applicant has not made out a case for bail, therefore, this bail application is rejected.

10. Trial Court shall take all endeavour to record the statement of victim within a period of four months from today and thereafter the applicant will be at liberty to file a fresh bail application before learned Trial Court."

3. Learned counsel for applicant submits that statement of victim as well as two

other witnesses has already been recorded. He further submits that victim, a minor girl of about 7-8 years, has made material contradictions in her cross-examination and even the place of occurrence was disputed. Applicant is in jail since 19.07.2022 and since material witnesses have been examined, therefore, there is no possibility or likelihood of any influence to witnesses.

4. Aforesaid submissions are opposed by learned AGA as well as learned counsel appearing for High Court Legal Services Committee.

5. This is second bail application, therefore, the Court has to consider the subsequent events only. In the present case, only subsequent event is the statement of witnesses recorded during trial. It has not been denied that victim in her examination-in-chief has supported prosecution case in entirety. So far as submission with regard to contradiction, if any, is concerned, that would be a subject matter of trial and this Court while considering bail application cannot consider it to the extent that contradictions are vital or material or against the prosecution case.

6. In aforesaid circumstances, considering the nature of evidence at this stage as well as nature of alleged offence committed by applicant, no case of bail is made out.

7. However, the application is disposed of with direction to Trial Court to conclude trial expeditiously, preferably within a period of six months from today, if there is no legal impediment.

Order Date :- 27.10.2023

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