

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45313 of 2023

Applicant :- Constable Sudhir Kumar

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

Counsel for Applicant :- Kailash Singh Yadav,Dheeraj Kumar Yadav,Murli Dhar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. On 27.10.2023 notice has been issued to opposite party no.2 through CJM concerned as matter also pertains to provisions of Section 376AB IPC.
2. As per office report dated 20.11.2023, service report is still awaited.
3. Sri Jhamman Ram, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 15.10.2023.
4. Despite service of notice, none appeared on behalf of the informant.
5. In view of the observations made by this Court in the case of **Ajeet Chaudhary Vs. State of U.P. and another** passed in Criminal Misc.Bail Application No. 45784 of 2020, if notice has been served to the informant/victim by the State then there is even no need to issue separate notice by the court to him/her, therefore, in view of the matter, the instant bail application is being heard.
6. Heard Sri Kailash Singh Yadav, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, for the State.
7. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Sessions Trial

No. 819 of 2023 arising out of Case Crime No.181 of 2023, under Section 376 (A.B.) IPC and Section 5Da/6 POCSO Act, Police Station Kotwali Katra, District Mirzapur during pendency of the trial.

8. FIR of the present case was lodged against the applicant, who is Constable in PAC and according to the FIR, on 13.8.2023 at about 7.00 PM in the evening when applicant came in the house of informant for dinner then after taking dinner he made sexual assault upon the daughter of the informant, who is aged about 8 years and also inserted his fingers in her vagina

9. Learned counsel for the applicant submits that applicant is Constable in PAC along with the husband of the informant and on the basis of false allegation he has been made accused in the present matter.

10. He further submits that applicant and husband of the informant were close friends but the informant, i.e., mother of the victim is a very shrewd and cunning lady and she used to extract money from her husband and sometimes she also used to borrow money from the applicant and only due to dispute of borrowing money applicant has been made accused in the present matter by her.

11. He further submits that in the FIR informant specifically stated that she witnessed the applicant when he was inserting his fingers in the vagina of the victim but the victim in her statement under Section 164 Cr.P.C. stated that at the time of incident informant was not present at home and when she arrived at home then subsequently she informed her about the incident and this material contradiction shows that applicant on the basis of false allegation he has been made accused in the present matter.

12. He further submits that applicant is not having any previous

criminal history and in the present matter he is in jail since 14.8.2023.

13. Per contra, learned AGA vehemently opposed the prayer for bail and submits that applicant is Constable in PAC and he misused his position being friend of the father of the victim and victim, who is hardly aged about 8 years in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant firstly touched her breast and thereafter inserted his fingers in her vagina and if there is some contradictions in the statements of the victim then also at this stage merely on such contradictions statement of the victim should not be disbelieved at this stage.

14. Learned AGA further submits that considering the nature of allegation and relationship of applicant with the victim and also the fact that he is Constable in PAC, he should not be released on bail.

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

16. Applicant is admittedly a Constable in PAC and he was also friend of the father of the victim and as per allegation when he was invited for dinner in the house of victim then after taking dinner he made sexual assault upon the daughter of his friend, who is hardly aged about eight years and also inserted his fingers in her vagina.

17. Victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant firstly touched her breast and thereafter inserted his fingers in her vagina.

18. However, it appears that there are some contradictions in the FIR and in the statement of the victim recorded under Section 164 Cr.P.C. but victim is hardly eight years old girl and there is no

contradiction in substratum of allegation of rape in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

19. Further, applicant failed to bring any cogent and good reasons for his false implication and averment made by him in paragraph-13 to the affidavit filed in support of the instant bail application appears to be vague and on such vague averment/defence, the statement of the victim recorded during investigation cannot be disbelieved at this stage.

20. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

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

22. 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 :- 21.11.2023

SKM