

**Court No. - 69**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 45918 of 2023

**Applicant :-** Aditya Tiwari @ Nanu

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

**Counsel for Applicant :-** Amrendra Pratap Singh, Shivendra Kumar Singh

**Counsel for Opposite Party :-** G.A., Anil Kumar

**Hon'ble Samit Gopal, J.**

1. List revised.
2. Heard Sri Amrendra Pratap Singh and Sri Shivendra Kumar Singh, learned counsels for the applicant, Sri Anil Kumar, learned counsel for the first informant and Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Aditya Tiwari @ Nanu**, seeking enlargement on bail during trial in connection with Case Crime No. 399 of 2023, under Sections 328, 376(2)(1), 506 IPC and Section 3/4 POCSO Act, registered at P.S. Naini, District Prayagraj.
4. The FIR of the matter was lodged on 29.07.2023 by Suresh Kumar Yadav against the applicant alleging therein that his daughter is aged about 14 years studying in Maharshi Intermediate College, Naini. The applicant since last two years lured her and had made friendship with her. He had an evil eye on her. On 04.01.2023 an application was given by him at Police Station Naini regarding the said fact after which the applicant was apprehended by the police and kept overnight after which on intervention of the parents of the applicant and others it was assured that he will never ever interfere in the life of his daughter, he was released. On 20.07.2023 the informant received a call from the class teacher of his daughter who stated that his daughter has not come to the college on which he informed her that she has gone to college to which she has stated that his daughter is roaming with some boy in civil lines. On the said information the informant started enquiry about it and came to know that the applicant used to take her out regularly. He also used to give her

some intoxicating substance due to which she became habitual to it and he committed rape on his daughter. She is being treated for the same. On enquiry his daughter told him that on giving her intoxicating substance she was physically exploited by the applicant. She further stated that on the saying of the applicant she has taken money from her pocket many times.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim in her statement under Section 164 Cr.P.C. has stated that she and the applicant were friends and he has not done any wrongful act with her. It is argued that since both of them were friends and the victim states of her willingness to marry the applicant when she attains majority, no offence whatsoever is made out. It is argued that the date of birth of the victim was registered in the Nagar Nigam and as per the said school certificate she is aged about 16 years. It is further argued that the prosecution relies upon the registration of date of birth of the victim in the CBSC Board and as per the same, she was aged about 15 years but there is no basis of declaration of the said date of birth as given for registration. He further argued that the applicant has no criminal history as stated in para 28 of the affidavit and is in jail since 29.07.2023.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail. It is argued that the victim is a minor girl. The incident of rape is stated to have taken place around two years back, even at that point of time she was a minor. It is argued that considering both the documents regarding the mention of her date of birth she is a minor as of now and as such even previously she was a minor. It is argued that since the victim is a minor, her consent cannot be considered. It is further argued that the victim in her statement under Section 161 Cr.P.C. has stated of the applicant committing sexual assault on her. It is argued that the victim being friend with the applicant would not be any purpose. Her disclosure of marrying the applicant later on cannot absolve him of the offences. It is argued that there is no reason for false implication of the applicant and as such the prayer for bail of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the victim is a minor girl. The victim in her statement under Section 161 Cr.P.C. states of the applicant committing sexual assault on her. Two documents relating to the date of birth though gives the variations in the date of birth but from the same, the victim is a minor. The applicant is named in the

FIR and there are allegations against him of committing rape upon her. The consent of a minor is of no worth. I do not find it a fit case for bail.

8. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

9. The bail application is, accordingly, ***rejected***.

**Order Date :- 16.11.2023**

M. ARIF

(Samit Gopal, J.)