

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47857 of 2023

Applicant :- Tedu @ Ismail

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

Counsel for Applicant :- Nagendra Kumar Tripathi, Avinash Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Dr. S.B.Maurya, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 3.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Nagendra Kumar Tripathi, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.106 of 2023, under Section 376 AB IPC , Section 5M/6 POCSO Act and Section 3(2)5 SC/ST Act, Police Station Jataha Bazar, District Kushinagar during pendency of the trial.
5. FIR of the present case was lodged against the applicant and according to the FIR, applicant, who is aged about 22 years, committed rape upon the daughter of the informant aged about 10 years. It is further mentioned in the FIR that the daughter of the informant was mentally retarded.
6. Learned counsel for the applicant submits that applicant is innocent and on the basis of false allegation he has been made accused in the present matter.
7. He further submits that actually applicant and informant both

are neighbours and a dispute with regard to drain is pending between both the families and only due to this reason, he has been made accused in the present matter.

8. He further submits that however as per allegation applicant committed rape upon the daughter of the informant aged about 10 years but medical report of the victim suggests that she did not sustain any injury.

9. He further submits that even applicant is also mentally retarded. He next submits that from both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. it appears that very casually applicant was made accused for such heinous offence.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 25.6.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that victim is child under the provisions of POCSO Act and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and as per statement of the informant, her mother she was also mentally retarded.

12. Learned AGA further submits that applicant failed to bring any good reason of his false implication and, therefore, he should not be released on bail.

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

14. However, in the FIR the age of the victim has been disclosed as 10 years but from the perusal of the certificate issued by CMO concerned, her radiological age was found about 15 years,

therefore, from the record it appears, she was child.

15. As per allegation applicant committed rape upon the victim and victim also stated against him in her both the statements recorded under Sections 161 and 164 Cr.P.C.

16. Further, from the medical report of the victim which was produced by the learned AGA during the course of argument, however, it appears that she did not sustain any injury but as per CMO concerned her radiological aged was about 15 years and, therefore, it is not necessary that in the alleged incident she must have sustained injuries.

17. Further, applicant very casually disclosed in paragraph-12 to the affidavit filed in support of the instant bail application about the reasons of his false implication but in my considered view, on the basis of such vague and general averment the statement of the victim recorded during investigation cannot be discarded at this stage.

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

19. Accordingly, the instant bail application is rejected.

20. 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 :- 13.12.2023

SKM