

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46172 of 2023

Applicant :- Jai Tiwari

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

Counsel for Applicant :- Punit Kesarwani, Abhishek Kumar Saroj, Vinod Kumar Bhartiya

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard learned counsel for applicant and learned AGA for State.
2. This is second bail application filed by applicant-Jai Tiwari in Case Crime No. 282 of 2021, under Sections 376, 506 IPC, 6 POCSO Act and 67 I.T. Act, Police Station Barsathi, District Jaunpur. First bail application for applicant was rejected vide order dated 16.05.2023 by giving following reasons:

“11. In the present case, it appears that offence of rape allegedly took place when the victim was a minor girl aged about 16 years by the applicant and the same was corroborated by her statements recorded under Sections 161 and 164 Cr.P.C. It also appears that the victim was afraid of social disgrace, therefore, has not initially told about alleged occurrence of rape to her parents, however, when the applicant put her unsolicited photographs on various WhatsApp groups and were forwarded to her father, she mustered courage and intimated about the earlier occurrence of alleged rape to her parents as well as about photographs and video also.

12. From above referred facts and submissions as well as record, it transpires that victim's unsolicited photographs and video allegedly clicked and recorded by the applicant were forwarded to various WhatsApp groups and even to informant (father of victim) also. The Investigating Officer has collected C.D.R. reports of various phone numbers including used by the applicant and has observed that

applicant's mobile number was used in crime, therefore, at this stage, Court cannot put such evidence under clouds of doubts.

13. Therefore, considering seriousness of the offence, nature of the evidence on record as well as that statement of the victim has not been recorded till date before learned Trial Court and that applicant is a possible threat to victim, no case of bail is made out.”

3. Learned counsel for applicant submits that subsequently statement of victim has been recorded, however, he is not able to dispute that victim has supported case of prosecution in her examination-in-chief. Learned counsel for applicant further submits that applicant is in jail since 17.05.2022 and there is no possibility of any influence to be made on remaining witnesses, therefore, he may be released on bail.

4. Learned AGA appearing for State has opposed the above submissions.

5. In aforesaid circumstances and taking note of nature of evidence, i.e., testimony of victim, which appears to be consistent and has supported the case of prosecution and that period behind bar is only one and half years, whereas in event of conviction, minimum sentence would be imprisonment of ten years which may extend to imprisonment for life, I do not find that it is a fit case for grant of bail at this stage.

6. The application is accordingly dismissed.

7. Trial Court is directed to conclude trial expeditiously, preferably within a period of six months from today, if there is no legal impediment.

Order Date :- 1.11.2023

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