

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46424 of 2023

Applicant :- Nihalu Alias Nihal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Chaurasia

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Ajay Kumar Chaurasia, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 254 of 2022, under Sections 376(2)(th), 511 IPC, Police Station- Saiya, District- Agra, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicant and according to the FIR, daughter of the informant aged about 22 years was mentally retarded and informant witnessed that applicant disrobed her daughter in her room and after seeing the informant, applicant ran away.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and applicant is the neighbour of the informant and some dispute with regard to drain is pending between them and only due to this reason, applicant has been made accused in the present matter.
5. He further submitted that victim is mentally retarded lady, therefore, her statement under Section 164 Cr.P.C. was not recorded and during investigation, with the help of her mother her statement was recorded by the Investigating Officer under Section 161 Cr.P.C. but no reliance can be placed on such version. He further submitted that applicant neither ever entered in the room of the victim nor he ever tried to commit rape with her.
6. He further submitted that applicant is not having any criminal history and he is in jail since 06.08.2022 i.e. for more than a year.

7. Per contra, learned AGA opposed the prayer for bail and submitted that victim of the case is mentally retarded lady and applicant misused her mental condition and informant found him in the room of the victim and when she witnessed him then at that time victim was nude and applicant was lying alongwith her in semi nude condition and this fact is evident from the statement of the informant i.e. mother of the victim recorded under Section 161 Cr.P.C., therefore, applicant should not be released on bail.

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

9. Considering the fact that victim of the case is mentally retarded lady and informant i.e. mother of the victim witnessed the applicant while he was lying on her bed in semi nude condition and victim was also lying alongwith him in nude condition, in my view, applicant is not entitled to be released on bail.

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

11. 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.

12. However, considering the fact that applicant is in jail for more than a year, trial court is directed to conclude the trial of the case within a period of eight months from the date of production of certified copy of this order in accordance with law, if there is no legal impediment.

Order Date :- 2.11.2023

KK Patel