

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49135 of 2023

Applicant :- Nitesh Kumar

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

Counsel for Applicant :- Rajnish Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State apprise the Court that notice has been served to the informant on 31.10.2023. Despite service of notice none appeared on behalf of the informan.

2. Heard Shri Rajnish Dubey, learned counsel for the applicant and Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.407 of 2023, under Section 376-AB, 506 IPC & Sections 5m/6 POCSO. Act, Police Station Teela Modh, District Ghaziabad, during pendency of the trial in the court below.

4. From the record, it reflects that FIR of the present case was lodged on 13.07.2023 against applicant and according to the F.I.R., on 13.07.2023 at about 02:00 p.m. in the afternoon the informant witnessed that her daughter aged about two years was in the lap of the applicant and applicant has removed her panties and he also has removed her briefs and he was making sexual assault upon her and after witnessing the informant, applicant tried to escape but the husband of the informant and others

apprehended the applicant at spot.

5. Learned counsel for the applicant submits that on the basis of false allegation applicant has been made accused in the present matter and actually applicant has given Rs.18,000/- to the informant and when applicant demanded back his money then instead of returning his money, he has been made accused in the present matter.

6. He further submits that from the medical report of the victim, it appears that she did not sustain any injury however applicant sustained an injury on his head.

7. He next submits that due to money of the applicant when some dispute arose between the applicant and the husband of the informant then applicant sustained injuries on his head. He further submits that on the basis of such allegation of sexual assault, it is very easy to implicate anyone.

8. He further submits that applicant is not having any previous criminal history and he is in jail in the present matter since 30.06.2023 i.e. for more than four months, therefore, he may be released on bail.

9. Per contra, learned A.G.A. for the State opposed the prayer for bail and submits that applicant was arrested at spot and not only informant but number of witnesses stated in their statements recorded during investigation that applicant made sexual assault upon daughter of the informant aged about two years and he has removed her panties and even removed his briefs and therefore, he should not be released on bail.

10. I have heard learned counsel for both the parties and

perused the record of the case.

11. Considering the fact that applicant was arrested at spot and number of persons witnessed that he has removed the panties of the victim and even also removed his briefs and after taking the victim in his lap made sexual assault upon her, in my view, applicant is not entitled to be released on bail at this stage and as a result, the instant bail application filed by the applicant - **Nitesh Kumar** is **rejected**.

12. 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 :- 20.11.2023

Zafar