

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57476 of 2022

Applicant :- Brijanand

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

Counsel for Applicant :- Aftab Alam, Ambreen Masroor, Sadrul Islam Jafri

Counsel for Opposite Party :- G.A., Tanisha Jahangir Monir

Hon'ble Samit Gopal, J.

1. Heard Sri Aftab Alam, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record. Ms. Tanisha Jahangir Monir, learned panel lawyer for the High Court Legal Services Committee appearing for the opposite party no.3 is not present.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Brijanand**, seeking enlargement on bail during trial in connection with Case Crime No. 291 of 2022, under Section 376-AB, 323, 506 I.P.C. and Section 5M/6, 9M/10 of POCSO Act, Police Station Bidhnu, District Kanpur Nagar.

3. As per the office report dated 09.01.2023 notice has been served on the first informant through his wife. Despite service of notice, no one appears on his behalf.

3. The first information report of the present case was lodged on 25.06.2022 by Sanjay Pal against the applicant and his daughter alleging therein that he, his wife, two daughters and one son live in a rented house having 2-3 other tenants. There are some shops in the building which are also on rent. His younger daughter aged about 7 years went to the shop of the applicant at about 11-12 p.m. on 23rd June to purchase some articles where the applicant did some immoral act with her, inserted his finger in her private parts and made her hold his private parts and threatened her of not disclosing it to anyone otherwise he would get her beaten from her parents. When his daughter came back home she told about the incident. On 25.06.2022 he went to make a complaint to the daughter of the applicant after which the applicant and his daughter came to his house and assaulted his wife and threatened them that they would not be able to do anything to him. The first information report has thus been lodged.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the incident in the present matter is of 23.06.2022 of which the first information report has been lodged on 25.06.2022 which is after 02 days delay for which there is no plausible explanation. It is argued that although the alleged place of occurrence is shown to be a shop of the applicant which is on the road but there is no independent witness to support the prosecution case. It is argued that the story as brought

forward in the first information report is totally false and concocted in as much as no person will do any act as alleged in the first information report in a shop which was on the road. It is argued that the present case is of false implication. It is further argued that the mother of the victim refused the internal medical examination of her daughter. It is argued that the victim although in her statement recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. corroborates the prosecution version but looking to the age of the victim which is about 07 years and reading the said statements an inference can be drawn that the same is a tutored statement. It is further argued while placing the supplementary affidavit dated 04.12.2023 that the applicant is aged about 77 years and is an old man who is ill and suffering from Left Inguinal Hernia who has been advised surgery for the management of his illness. The applicant has no criminal history as stated in para 22 and is in jail since 26.06.2022.

5. *Per contra*, learned counsel for the State vehemently opposed the prayer for bail and argued that the applicant is named in the first information report, statement of the informant, statement of the victim recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. There are allegations serious in nature against them. It is argued that the victim is a girl aged about 07 years. It is argued that there is no reason coming forward regarding the reason for false implication. It is argued that the applicant is involved in the present matter and as such the bail application be rejected.

6. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is named in the first information report, statement of the informant, statement of the victim recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. There are serious allegations against him. The victim is aged about 07 years. There is no reason for false implication. The victim has categorically assigned the role to the applicant by naming him. He was shop owner in the same building in which the victim was residing with her parents. There was no occasion of misidentity also. No ground for bail is made out.

7. Looking to the facts and circumstances of the case, this Court does not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 13.12.2023

AS Rathore

(Samit Gopal,J.)