

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49160 of 2023

Applicant :- Shabir

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

Counsel for Applicant :- Rajeev Sawhney

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Kunwar Tejendra Bahadur, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 18.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Rajeev Sawhney, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA, 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.584 of 2022, under Section 376(3) IPC and Section 3/4 POCSO Act, Police Station Kotwali Shahar, District Bijnor during pendency of the trial.
5. FIR of the present case was lodged against the applicant on 30.8.2022 and according to the FIR, on 28.8.2022 applicant committed rape with the daughter of the informant aged about 13 years.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually informant, i.e., mother of the victim has taken Rs.5,000/- from the applicant but when applicant demanded back his money then instead of returning his money, she implicated the applicant in the

present matter.

7. He further submits that as per allegation applicant committed rape with the daughter of the informant on 28.8.2022 but FIR of the present case was lodged on 30.8.2022 and delay of two days in lodging the FIR clearly suggests that false story has been cooked up by the informant and implicated the applicant in the present matter.

8. He further submits that the statement of the victim under Section 161 Cr.P.C. is not on record and when her statement under Section 164 Cr.P.C. was recorded then she only alleged that applicant was doing indecent activities upon her and she never stated that applicant committed rape with her.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 3.9.2022, i.e., for the last more than a year.

10. Per contra, learned AGA opposed the prayer for bail and submits that applicant is about 50 years old middle aged man and victim even as per ossification test report was around 18 years old and according to the informant, she was mentally retarded girl and she in her statement under Section 164 Cr.P.C. stated that applicant made sexual assault upon her and disrobed her and after disrobing her touched her private part and also slapped her, therefore, applicant should not be released on bail.

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

12. Considering the fact that applicant is aged about 50 years old middle aged man and victim is hardly 18 years old girl and she in her statement recorded under Section 164 Cr.P.C. made serious

allegation against the applilcant and even as per informant she was mentally retarded, in my view, applicant is not entitled to be released on bail at this stage.

13. Accordingly, the instant bail application is **rejected** at this stage.

14. 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 :- 30.11.2023

SKM