

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49631 of 2023

Applicant :- Kuldeep

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

Counsel for Applicant :- Hemant Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, 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 Rajveer Kumar Singh Parmar, learned Advocate, holding brief of Sri Hemant Kumar Dubey, learned counsel for the applicant and Sri Imran Khan, 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.257 of 2023, under Sections 376 and 323 IPC and Section 3/4 POCSO Act, Police Station Tarkulwa, District Deoria during pendency of the trial.
5. FIR of the present case was lodged against the applicant and according to the FIR, applicant in the absence of the informant committed rape with the daughter of the informant aged about 14 years. It is further mentioned in the FIR that applicant was about 19 years old.
6. Learned counsel for the applicant submits that applicant is innocent and on the basis of false allegation of rape he has been made accused in the present matter.

7. He further submits that applicant is the first cousin of the victim and informant side is highly inimical with the family of applicant.
8. He further submits that with regard to property a dispute is pending since long between both the sides.
9. He further submits that on 18.11.2020 mother of applicant moved an application against the informant of the present case before the Police and thereafter on 8.8.2021 a compromise was executed between both the sides and all these facts are evident from annexures 5 and 6 to the affidavit filed in support of the instant bail application.
10. He further submits, however, there is allegation that on the call of applicant, who was first cousin of the victim, she went to his home but considering the bitter animosity between both the sides this fact does not appear to be correct.
11. He further submits that however, victim in her statement recorded under Section 161 Cr.P.C. stated that she gave a bite on the hand of applicant but when her statement under Section 164 Cr.P.C. was recorded then she stated that she gave a bite on his chest and further applicant did not sustain any injury either on his hand or chest and this fact also shows that entire allegation made against the applicant is totally false.
12. He further submits that however, Doctor during medical examination noted vaginal bleeding but victim is 15 years old girl and her secondary sex character were well developed and due to number of reasons including her menstrual period bleeding may be present on her private part.
13. He further submits that Doctor in her opinion did not opine that any sexual assault was made upon the victim.

14. He further submits that applicant admittedly is aged about 19 years old young boy and by implicating him falsely informant almost spoiled his entire career.

15. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 2.9.2023, i.e., for the last more than three months.

16. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is hardly 14 years old child and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. categorically stated that applicant committed rape upon her and during her medical examination Doctor also noted vaginal bleeding but they could not dispute the fact that from the record enmity between both the sides is apparent and applicant is the first cousin of the victim and he is hardly 19 years old.

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

18. However, victim of the case appears to be 14 years old girl and she is cousin sister of applicant and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 and 164 Cr.P.C. and during her medical examination Doctor also found vaginal bleeding but from the record (Annexures 5 and 6) it appears that relationship between both the sides was not cordial one and a dispute with regard to property is pending between both of them and in the year 2020 mother of applicant moved an application against the informant of the case and in the year 2021 a compromise was also executed between both the sides.

19. Further, however, Doctor noted bleeding from the vagina of the

victim but victim is aged about 14 years and her secondary sex character were well developed and, therefore, I find force in the argument advanced by the learned counsel for the applicant that due to number of reasons, in such age, bleeding may be present at her vagina and even Doctor did not opine that any sexual assault was made upon the victim.

20. Further, applicant is hardly 19 years old boy and he is not having any previous criminal history and in the present matter he is in jail since 2.9.2023, i.e., for the last more than three months.

21. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

22. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

23. Let the applicant-**Kuldeep** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

24. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this

Court for cancellation of the bail of the applicant.

25. 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 :- 7.12.2023

SKM