

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49946 of 2023

Applicant :- Ram Mohan

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

Counsel for Applicant :- Brajesh Kumar Solanki

Counsel for Opposite Party :- G.A.,Babita Upadhyay

Hon'ble Sameer Jain,J.

1. Sri Shatrughan Yadav, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 20.11.2023.

2. Despite service of notice, none appeared on behalf of the informant. However, Ms. Babita Upadhyay, learned counsel appearing for the High Court Legal Services Committee and the learned AGA, for the State, are present.

3. Heard Sri Brajesh Kumar Solanki, learned counsel for the applicant, Ms. Babita Upadhyay, learned counsel appearing for the High Court Legal Services Committee and Sri Shatrughan Yadav, 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.421 of 2022, under Sections 363, 366, 376(3) and 506 IPC, Section 5(J)(2)/6 POCSO Act and Section 3(2)5 SC/ST Act, Police Station Khaga, District Fatehpur during pendency of the trial.

5. FIR of the present case was lodged against the applicant and according to the FIR, daughter of the informant aged about 18 years had gone to her Inter College but did not return and somebody informed the informant that she was last seen along with applicant. It is further mentioned in the FIR that earlier also

applicant was caught red handed while he was teasing the victim.

6. Learned counsel for the applicant submits that from the FIR it reflects that on the basis of suspicion, applicant was made accused in the present matter. He next submits that when victim was recovered after about nine months from Khaga Railway Station and her statement was recorded under Section 161 Cr.P.C. then she stated that applicant enticed her away and made physical relationship with her.

7. He further submits that same story was narrated by the victim in her statement under Section 164 Cr.P.C. but both the statements of the victim recorded during investigation are not reliable and victim stated against the applicant under the pressure of her parents.

8. He further submits that during investigation when the statement of the sister of the victim was recorded under Section 161 Cr.P.C. then she stated that in anger victim left her paternal home and she did not state that applicant enticed her away.

9. He further submits that the statement of the sister of the victim also suggests that on the basis of false allegation of rape and enticement applicant has been made accused in the present matter.

10. He further submits that there is no reliable document of the school on record on the basis of which at this stage it can be inferred that she was below 18 years old girl.

11. He further submits that during investigation ossification test of the victim was not conducted.

12. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 25.7.2023.

13. Per contra, learned AGA as well as learned counsel appearing for the High Court Legal Services Committee opposed the prayer for bail and submitted that victim is hardly 14 years old girl and when she was recovered then she stated about her plight and also stated that applicant about nine months confined her and committed rape upon her.

14. Both the learned counsels further submitted that applicant is a married man and therefore, considering the statement of the victim and his marital status, applicant should not be released on bail.

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

16. From the record it reflects that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation that applicant is a married person and he enticed her and has taken her to Gujarat and committed rape upon her.

17. Further, from the school record of the victim it reflects that at the time of incident she was hardly 14 years old. However, learned counsel for the applicant contended that due to enmity applicant has been made accused in the present matter but no good reason of his false implication could be brought by applicant on record.

18. Therefore, considering the facts and circumstances of the case discussed above, particularly the fact that victim is child aged about 14 years and applicant is a married man, in my view, applicant is not entitled to be released on bail.

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

20. 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 :- 8.12.2023

SKM