

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 59392 of 2022

Applicant :- Monu @ Lalaram

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

Counsel for Applicant :- Mrityunjay Dwivedi, Indra Mani Tripathi

Counsel for Opposite Party :- G.A., Anand Prakash Pandey

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Indra Mani Tripathi, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A-I for the State and perused the material on record. Sri Anand Prakash Pandey, learned counsel for the first informant is not present even when the matter has been taken up in the revised list.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Monu @ Lalaram, seeking enlargement on bail during trial in connection with Case Crime No.213 of 2022, u/s 363, 376 IPC r/w Section 3/4 POCSO Act, Police Station Palimukimpur, District Aligarh.

4. Vide order dated 20.4.2023 passed by coordinate Bench of this Court, learned A.G.A was directed to place on record the status of investigation. Learned A.G.A informs the Court that charge sheet has been submitted in the matter against the applicant on 11.10.2022 after conclusion of the investigation on which cognizance has been taken by the court concerned.

5. The FIR of the matter was lodged on 15.9.2022 by Kailash Kashyap against unknown person alleging therein that on 14.9.2022 at about 1 p.m. his daughter aged about 16 years went from the house to ease herself. She is a mentally retarded girl. She did not return back. She was searched by him and his family members but she could not be traced. A report be thus lodged and action be taken.

6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the said FIR was lodged under Section 363 IPC. Subsequently on 16.9.2022 the victim was found in the house of the first informant after which she was interrogated. Although the victim during the investigation has named the applicant and has stated of him

committing sexual assault on her but the supplementary medico legal report does not show any injury on her body either externally or internally as stated therein. As such the medical corroboration of the present incident is not there in the present matter. While placing para 14 and 16 of the affidavit filed in support of bail application, it is argued that there is a dispute going on between the applicant and the first informant with regards to drainage which was the reason for false implication of the applicant. Learned counsel for the applicant has placed supplementary affidavit dated 27.4.2023 and while placing para 4 and annexure no.S.A-1 to the same, it is argued that the mother of the victim had moved an application u/s 156(3) Cr.P.C. for an incident of enraging of her modesty but subsequently she did not press the same and the same was got dismissed as not pressed vide order dated 25.7.2019. Further while placing para 5 of the said supplementary affidavit it is argued that looking to the said application u/s 156(3) Cr.P.C. it is clear that the first informant, his wife and his daughter are running a racket and are initiating various efforts against other persons of the locality. It has also been pointed out that the applicant is not having any criminal history as stated in para 16 of the affidavit and is in jail since 19.9.2022.

7. Per contra learned counsel for the State vehemently opposed the prayer for bail and argued that the victim as per the supplementary medical report was opined to be aged about 16 years of age as has been opined by the C.M.O concerned. The said supplementary medical examination report in specific terms state that sexual offence cannot be ruled out. The applicant is named by the victim in her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. in which he is stated to have committed rape upon her. In so far as the application under Section 156(3) Cr.P.C. moved by the mother of the victim is concerned, the said case is altogether different involving different persons who were the accused therein and as such there is no similarity and connection between the present case and other case, as such the bail application be rejected.

8. After hearing the counsel for the parties and perusing the record, it is apparent that the victim has been opined to be 16 years of age and as such she is a minor. The supplementary medico examination report does not rule out any possibility of sexual assault. The victim in her statements recorded under Sections 161 Cr.P.C and 164 Cr.P.C. names the applicant as person committed rape upon her. In so far as ground, malafidies and reason for false implication is concerned, the same is without any corroboration and is a mere pleading. In so far as the application moved by the

mother of the victim under Section 156(3) Cr.P.C. is concerned, the same relates to altogether different offence with different accused persons.

9. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is **rejected**.

(Samit Gopal, J.)

Order Date :- 16.10.2023
Gaurav Kuls