

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 51349 of 2023

**Applicant :-** Shivam Gupta

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

**Counsel for Applicant :-** Shivajee Srivastava, Sudhir Kumar Srivastava

**Counsel for Opposite Party :-** G.A., Naman Kishor Sharma

**Hon'ble Sameer Jain, J.**

1. Shri Naman Kishor Sharma, Advocate filed his power on behalf of the informant in Court today, which is taken on record.
2. Heard Shri Shivajee Srivastava, learned counsel for the applicant, Shri Shatrughan Yadav, learned A.G.A. for the State-respondent and Shri Naman Kishor Sharma, learned counsel for the informant.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.574 of 2023, under Sections 376D, 506 IPC & Sections 5g/6 POCSO Act, Police Station Baheri, District Bareilly, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 23.09.2023 against applicant and two others and two unknown persons and according to the FIR, on 19.09.2023 when in the night daughter of the informant aged about sixteen years was returning back to her home then applicant and two nominated accused persons dragged her and thereafter they committed rape upon her. It is further mentioned in the FIR that informant i.e. mother of the victim when returned on 22.09.2023 then she moved an application to lodge the

FIR against them.

5. Learned counsel for the applicant submits that entire allegations made against applicant are totally false and baseless and FIR of the present case was lodged after four days and however informant in the FIR tried to explain the delay in lodging the FIR by stating that as she returned only on 22.09.2023 i.e. after three days' from the date of alleged date of incident, therefore, FIR was lodged subsequently but excuse of delay in lodging the FIR given by the informant appears to be vague and merely on the basis of such explanation, it cannot be said that she has explained the delay in lodging the FIR, which was ultimately lodged after four days.

6. He further submits that however victim is alleged to have been aged about sixteen years made allegation of gang rape against applicant and two others in her both the statements recorded under Sections 161 and 164 Cr.P.C. but story narrated by her does not appear to be convincing and even as per her medical examination, which was conducted on 23.09.2023, she did not sustain any injury on her body.

7. He further submits that applicant has been made accused in the present matter only due to the previous enmity as his brother, Dinkar Gupta, who is a Corporator, moved two applications against informant and victim on 23.08.2022 and 06.09.2023, which have been annexed as Annexure No.9 to the affidavit and from perusal of both the applications, it appears that he raised objections with regard to the character of the informant and her daughter i.e. victim.

8. He nest submits that applicant is not having any criminal history and he is in jail in the present matter since 29.09.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submit that it is a case of gang rape and victim, who is hardly fifteen years old girl made allegation of gang rape against applicant and two others in her both the statements recorded under Sections 161 and 164 Cr.P.C. but both the counsels could not dispute the fact that as per allegation rape was committed on 19.09.2023 and before the alleged incident of rape, on 23.08.2022 and 06.09.2023 brother of the applicant moved applications before Higher Authorities of the Police against informant and her daughter i.e. victim of the case. They further could not dispute the fact that in both the applications, the brother of the applicant, who is a Corporator, raised objections with regard to the character of the informant and her daughter i.e. victim of the case.

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

11. However, victim in her both statements recorded under Sections 161 and 164 Cr.P.C. made allegation of gang rape against applicant and two others but story narrated by her prima-facie, does not appear to be convincing. Further from Annexure No.9 to the affidavit, it appears that even before the alleged incident of rape, two applications were moved by the brother of the applicant, who is a Corporator, before the Higher Authorities of the Police and from perusal of these two applications, it reflects that he raised objections with regard to the character of the informant and her daughter i.e. victim of the case and therefore, the defence taken by the applicant in the instant bail application cannot be completely brushed aside at this stage.

12. Further, however FIR of the present case was lodged after four days but immediately after the FIR when victim was medically

examined on 23.09.2023 then doctor did not find any injury on her body.

13. Further, applicant is not having any criminal history and he is in jail in the present matter since 29.09.2023.

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

15. Let the applicant- **Shivam Gupta**, 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.

16. 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.

17. 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 :- 1.12.2023**  
Zafar