

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52123 of 2023

Applicant :- Deepak Singh

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

Counsel for Applicant :- P.K. Rao

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Jhamman Lal, learned A.G.A. for the State-respondent apprise the Court that notice has been served to the informant on 26.11.2023. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri P.K. Rao, learned counsel for the applicant and Shri Jhamman Lal, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.114 of 2023, under Sections 376, 506 IPC & Sections 5/6 POCSO Act, 2012, Police Station Jaspura, District Banda, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 24.08.2023 against applicant and according to the FIR, on 24.08.2023, daughter of the informant aged about thirteen and half years old informed her that in the Month of February, 2023, applicant committed rape upon her. It is further mentioned in the FIR that when victim came to know that she was having pregnancy then she informed this fact to the informant i.e. her mother.

5. Learned counsel for the applicant submits that FIR of the present case was lodged after five months and this fact itself shows

that it is based on false facts.

6. He further submits that as per allegation, applicant committed rape upon the victim in the month of February, 2023 but in the month of February, 2023, he was in Surat on his job and this fact is evident from the presence register of the applicant and other employees, which has been annexed as Annexure No.5 to the affidavit.

7. He further submits that actually father of the victim has taken Rs.30,000/- from the applicant and when he demanded back his money then in stead of returning his money, he was made accused in the present matter.

8. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 25.08.2023.

9. Per contra, learned AGA opposed the prayer for bail and submits that victim is aged about thirteen and a half years old female child and when this fact was revealed to the informant that she was having pregnancy of about six month then she lodged the FIR of the present case after making enquiry from the victim.

10. He further submits that even victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant committed rape upon her and therefore, considering the pregnancy of the victim and her age, applicant should not be released on bail.

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

12. However, FIR of the present case was lodged after more than five months from the date of alleged rape, which was said to have

been committed by applicant upon the daughter of the informant but daughter of the informant is aged about thirteen and a half years old female child and it appears that when the fact was revealed to the informant i.e. mother of the victim that she was pregnant then she made enquiry from her then victim informed her that applicant committed rape upon her in the month of February, 2023 and due to the rape committed by the applicant, she conceived and thereafter, FIR of the present case was lodged and therefore, in such type of matters delay in lodging the FIR hardly matters.

13. Further, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant. However, applicant took a plea that due to the reason that he has given Rs.30,000/- to the father of the victim and when he demanded his money then in stead of returning his money, he was made accused in the present matter but on the basis of such vague defence, the statements of the victim recorded during investigation cannot be discarded at this stage.

14. Further, however by way of Annexure No.5 to the affidavit applicant tried to convince the Court that on the date and time of the alleged incident of rape he was on his job in Gujarat but genuineness of Annexure No.5 cannot be ascertained at this stage and merely on the basis of Annexure No.5, which is the presence chart of the applicant and others, it cannot be said that on the date of alleged rape applicant was not present at spot.

15. Therefore, considering the facts and circumstances, discussed above, in my view applicant is not entitled to be released on bail.

16. Accordingly, without expressing any opinion on the merits of

the case, the instant bail application filed on behalf of the applicant
-Deepak Singh is rejected.

Order Date :- 5.12.2023/Zafar