

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9200 of 2023

Applicant :- Harishchandra @ Channa

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home U.P. Civil Secrett. Lko. And 3 Others

Counsel for Applicant :- Anand Kumar Srivastava

Counsel for Opposite Party :- G.A.,Gulam Rabbani

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the accused/applicant, learned A.G.A. for the State as well as Shri Gulam Rabbani, learned counsel representing the opposite party no.2/complainant and perused the record.
2. This bail application has been moved by the accused/applicant- **Harishchandra @ Channa** for grant of bail, in Case Crime No. 45 of 2023, under Sections 34, 376 DA, 363 IPC & Section 5/6 of POCSO Act, Police Station Shridattganj, District Balrampur, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that the FIR of this case has been lodged by the father of the prosecutrix alleging therein that the prosecutrix aged about 13 years had gone missing. However, in the evening of 9.4.2023, the prosecutrix was recovered and her statements under Sections 161 & 164 CrPC were recorded.
5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that there are material contradictions in the statement of the prosecutrix recorded under Sections 161 & 164 CrPC and therefore, the story which has been cooked up by the prosecutrix, could not be believed.
6. It is further submitted that there is material contradiction in the statement of the prosecution witness with regard to the timing of the incident and if the statement of the star witness of this crime namely, Kinchawati Devi is taken on its face, it will emerge that on 9.4.2023 at about 11.30 am, it was known to her

that the prosecutrix has been sexually assaulted while in the FIR which has also been lodged on 9.4.2023 at 11.30 am, the factum of missing of the prosecutrix has been shown.

7. It is also submitted that the medical report of the prosecutrix is also not supporting the version of the prosecution. The applicant is in jail in this case since 11.4.2023 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned A.G.A., on the other hand submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

9. Learned counsel for the complainant/informant vehemently opposes the prayer for bail of the applicant on the ground that the age of the prosecutrix is just 14 years and 06 months and there is no ground to falsely implicate the applicant and the factum of rape has been corroborated by the prosecutrix in her statements recorded under Sections 161 & 164 CrPC and thus, keeping in view the tender age of the prosecutrix/victim, the applicant is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix, as per her educational credentials, has been assessed as 14 years and 6 months and thus, the prosecutrix was of tender age at the date and time of the alleged incident. Apart from the statements of the prosecutrix recorded under Sections 161 & 164 CrPC wherein she had named the applicant, there are other prosecution witnesses namely, Manisha, Smt. Ginni Devi and Arti Devi and these three witnesses apparently are not in relation with the prosecutrix. In categorical terms, it has been stated by them that they have seen the prosecutrix in a bad condition in sugarcane field and thereafter, the incident was reported to the sister-in-law (Bhabhi) of the prosecutrix. The fine points with regard to the facts may only be appreciated by the trial court in a full-fledged criminal trial after providing an opportunity to the parties to lead evidence. The prosecutrix has supported the version of the prosecution in her statements recorded under Sections 161 & 164 CrPC. She is of very tender age and at this stage, I do not find any ground on the basis of which the statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC may be doubted.

11. In result, the bail application moved on behalf of the applicant – Harishchandra @ Channa is hereby **rejected**.

12. However, the trial Court is directed to conclude the trial with utmost expedition, without granting adjournments to either of the parties.

13. If all the prosecution witnesses are not examined or trial is not concluded within six months, whichever is earlier, the applicant may approach this Court again for renewal of his prayer for bail.

Order Date :- 24.11.2023

Shravan