

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10747 of 2023

Applicant :- Zimidar @ Vikesh

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

Counsel for Applicant :- Raghunath Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Shri Raghunath Prasad, learned counsel for the applicant and learned A.G.A. appearing for the State.

2. The present bail application has been filed by the applicant seeking bail in case crime no.295 of 2023 under Sections 323, 452, 376, 504, 506 I.P.C. and Section 3/4 POCSO Act Police Station Kotwali Dehat, District- Hardoi.

3. As per version of the F.I.R. lodged on the basis of an application moved under Section 156 (3) Cr.P.C. against three persons, the minor daughter of the first informant was sexually assaulted by Zimidar @ Vikesh (the applicant herein) on 11.09.2022, finding her alone in her house. It is alleged in the F.I.R. that he forcibly intruded in the house of the victim and committed rape on her after dragging her in a room. When she protested and made noise, she was threatened with her life. She narrated the story to her mother. When her mother went for to complain, the victim, her brother and her mother were physically assaulted.

4. It is contended on behalf of the applicant that the incident allegedly occurred on 11.09.2022 and the F.I.R. in this Case has been lodged on 04.05.2023. The application under Section 156(3) Cr.P.C. was moved i.e. after about six months of the incident by cooking up a story. A simple incident of *Mar-peeet* has been converted into a serious case under Section 376 I.P.C. just to take revenge. There is no truth in the allegations. The medical report does not support the prosecution case as well. The statements given by the victim under Section 161 and 164 Cr.P.C. point in a different direction. She has said that she was in relationship with the applicant since quite sometime before the alleged incident. The victim herself has not alleged any commission of rape and has rather imputed allegations of molestation only. She has, later on improved upon her own

version in her statement under Section 164 Cr.P.C. Likewise, the mother of the victim, who is also the first informant, initially imputed allegations of molestation only and not of rape. The girl was found to be aged about 16-17 years in medical report.

5. The application for bail is opposed by learned A.G.A. contending that the victim was found below 18 years of age and has alleged sexual assault on her by the applicant.

6. I considered the contents of the F.I.R., the unexplained delay of about six months in moving an application under Section 156 (3) Cr.P.C., the variation in statements given under Section 161 and 164 Cr.P.C, the medical evidence and all the facts and circumstances of the case. The appellant is languishing in jail since last about six months and he has no criminal history. In my view, a case for bail is made out.

7. Let applicant - **Zimidar @ Vikesh** be released on bail in the aforesaid Case Crime Number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not temper with evidence/witnesses.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) framing of charge and (ii) recording of statement under Section 313 Cr.P.C. without exception.

Order Date :- 16.11.2023

-Amit K-