

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11703 of 2022

Applicant :- Krishna

Opposite Party :- State Of U.P. Thru Prin.Secy. Home Lucknow And Ors.

Counsel for Applicant :- O.P. Tiwari, Pramod Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Pramod Kumar Yadav, learned counsel for the applicant, Shri Akhilesh Kumar Srivastava, learned AGA for the State and perused the record. Service upon the complainant is sufficient but no one has appeared for the complainant's side.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.312 of 2021, under Sections 363, 366, 354Ka, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Kursi, District Barabanki.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated. The first information report has been lodged after one month five days from the date of incident and the medical report does not indicate that rape has been committed.

4. Learned counsel submitted that Case Crime No.296 of 2021 was lodged on 10.10.2021 by complainant Rajesh Kumar father of 'X' under Sections 363, 366, 323, 354Kha, 504, IPC., Section 9/10 POCSO Act and Section 3 (1)(Da), 3 (1) (Dha) 3 (2) (5) Va SC/ST Act, P.S. Kursi, District Barabanki in which applicant was also made co-accused. Learned counsel submitted that the present FIR has been lodged by Dilshad Ahmad and the applicant has been made accused. The final report was submitted in respect of the applicant on 26.01.2021. Learned counsel submitted that once the final report has been submitted in the same incident, then the applicant cannot be made accused in the present case which is lodged by Dilshad Ahmad, father of the present prosecutrix under Sections 363, 366, 354Ka IPC and Section 7/8 POCSO Act on 28.10.2021. Learned counsel submitted that the incident took place in the same Jogger's park and in one case, complainant Rajesh Kumar, father of prosecutrix of Case crime No.296 of 2021 had lodged FIR and another case complainant Dilshad Ahmad, father of present prosecutrix has lodged report. In previous case, final report has been submitted and in present case, the applicant has been made guilty and falsely implicated. The applicant has no criminal history. The applicant is in jail since 26.08.2022.

5. Learned AGA opposed the prayer for bail and has invited attention of this Court towards the statement of the prosecutrix recorded under section 164 Cr.P.C. in which victim has deposed before the court that she had gone along with applicant to Jogger's park where she was offered cold drink and after drinking, she became unconscious and the applicant committed rape against her. Learned AGA has submitted that the same fact has been narrated under section 161 Cr.P.C. He further submitted that the date of birth is 01.01.2007 as per the school certificate, she is minor, aged about 14 years and the offence has been committed by the applicant against a minor girl. Learned AGA submitted that case crime no.296 of 2021 was a separate case lodged by father of Nidhi whereas present FIR has been lodged by present victim's father. He has submitted that statement under Section 164 Cr.P.C. will prevail which has been recorded for the first time after that FIR i.e. on 11.10.2021. Therefore, looking to the involvement of the applicant in the commission of crime, the bail of the applicant is liable to be rejected.

6. After hearing learned counsel for the parties and after perusing the record, looking to the argument that prosecutrix is a minor girl, aged about 14 years; argument that statement under Section 164 Cr.P.C. goes to indicate that allegation of rape has been levelled against the applicant, I am of the opinion that the applicant is not entitled to be released on bail.

7. The application for bail of applicant **Krishna** is hereby, rejected.

8. However, I direct the trial Court to conclude the trial of the aforesaid case within a period of eight months from the date of production of certified copy of this order.

Order Date :- 11.10.2023

Pks