

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.1199 of 2024

Sanjay Kumar Paswan

.....Applicant

Versus

State of Uttarakhand

.....Respondent

Present:-

Mr. Harshit Sanwal, Advocate for the applicant.

Mr. Siddhartha Bisht, AGA for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant is in judicial custody in FIR No.83 of 2023, under Section 376 IPC and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012, Police Station Transit Camp, District Udham Singh Nagar. He has sought his release on bail.

2. Heard learned counsel for the parties and perused the record.

3. According to the FIR, on 08.03.2023, the applicant raped the victim, a young girl of 12 years of age, and also threatened her to life. The informant, who is maternal uncle of the victim, when questioned, she revealed that, in fact, the applicant had been raping her for the last one year.

4. Learned counsel for the applicant would submit that the entire case is false; the victim is 12 years of age. She was not primarily examined so as to assist as to whether she is capable to understand the questions and to

give answers. It is argued that under such circumstances, the evidence has to be scrutinized carefully with much caution. It is argued that at best it is a case of attempt.

5. Referring to the statement of the victim, it is argued that it doubts the prosecution case and it also reflects as if PW1, the victim, is tutored. Particularly, reference has been made to paras 2, 3, 7 and 9 of her statement.

6. In support of his contentions, learned counsel for the applicant has placed reliance on the principles of law, as laid down in the case of Pradeep vs. State of Haryana, AIR 2023 SC 3245. In para 8 of it, the Hon'ble Supreme Court has laid down the principles on this aspect, which is as follows:

“8. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.”

7. Learned State Counsel would submit that it is not always mandatory to preliminarily examine a child witness; it is discretion of a Court. He would submit that the victim as well as her medical examination supports the prosecution case.

8. It is the stage of bail. Much of the discussion at this stage is not expected of. To the extent of appreciating the controversy, the matter may be examined with the caveat that any observation, made at this stage, shall have no bearing at any subsequent stage of the case.

9. It is true that in case of a child witness, the preliminary assessment always helps a Court to assess the level of understanding of a child witness and ability to answer the question rationally; it also helps the higher courts to assess as to whether the witness was able to understand the questions and answer them rationally, but it is not the law that if it is not done, the evidence of the child witness may not be admissible. Of course, in every eventuality, the statement of the child witness has to be examined with caution and care. There may be both the aspect of a child witness. It may be truthful and chances of tutoring may also not be ruled out. It also depends upon all the attending circumstances.

10. In her statement under Sections 164 of the Code of Criminal Procedure, 1973, the victim has corroborated the prosecution case and has stated as to what the applicant has done to her. It is stated that the applicant is 44 years of age, whereas, the victim is 12

years of age. In the examination-in-chief also, the victim has stated as to what had happened to her. In one line, she has stated that as to when did the first incident take place. She has also stated that she does not know how to read, but she knows how to write. Based on these statements, it is argued that she is a tutored. Perhaps, it would require more scrutiny, which this Court refrains to it.

11. Having considered the submissions and all the attending factors, this Court is of the view that the bail application deserves to be rejected.

12. The bail application is rejected.

(Ravindra Maithani, J)

19.12.2024