IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 1717 of 2019

Mahesh Khanna ….Applicant

Vs.

State of Uttarakhand ……Respondent

Hon'ble Alok Kumar Verma, J.

This bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in connection with Case Crime No.31 of 2019, registered with Police Station Rudraprayag, District Rudraprayag for the offences under Sections 370,372,376 of the I.P.C., Section ¾ of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred as, "the Act, 2012") and Section 7 (1) (b) and Section 7 (2) of the Immoral Traffic (Prevention) Act, 1956.

2. According to the FIR, lodged by the victim on 25.06.2019, the victim was a student of class x. Her father left her family. One month back, the victim and her mother went to a hotel, situated in the District Rudraprayag, to stay there. The hotel owner called some persons, who committed rape on her. Her mother and the owner of the hotel took Rs.500/- each from the said persons and thereafter the said incident was happening continuously. Her mother and the hotel owner used to bring different persons daily for committing rape upon her.

3. Heard Mr. Ramji Srivastava, learned counsel for the applicant and Mr. Saurabh Pandey, learned Brief Holder for the State through Video Conferencing.

4. The learned counsel appearing for the applicant, hotel owner, submits that the applicant is owner of two hotels in Rudraprayg District under the same name and style; he has been falsely implicated in this case; on 06.06.2019, one Rajesh Bhandari came to the hotel along with the informant of this case and her mother and booked a room for the informant and her mother, stating that the marriage between the informant and him was settled and they were going to solemnize marriage shortly; making all the formalities by mentioning their name in the hotel register, room was given to the informant and her mother; the room was booked for their stay till 25.06.2019 for participating in necessary and customary functions; in case, there was any ill intention of the applicant then entry of the name and address of the informant and her mother was not made in the booking register and he would not collect their identity cards; CCTV footage of the hotel were also taken into custody by the police, but, the police did not show the said footage, which clearly shows that the applicant has not committed any offence; the date of birth of the victim was mentioned in the school register only on the basis of the information furnished by her maternal grand father; in the trial, as many as eight prosecution witnesses are examined; the victim, PW-3 deposed that she was married with one Naresh; this fact shows that the informant was major; the evidences of the informant are contradictory, the victim, PW-3 deposed that her examination-in-chief was under police pressure; there is no evidence against the applicant that he called any person in his hotel and took any money from him, who forcibly committed rape on the victim; earlier, the mother of the victim lodged an FIR in District Haridwar against other persons, which was lodged under Sections 366, 366A, 373, 376 (2)(n) of the I.P.C. and under the Act, 2012; the applicant has no criminal history; he is in custody since 27.06.2019; the victim has been examined, therefore, there is no chance of tampering with the evidence.

5. The learned counsel appearing for the State opposed the bail application, however, he fairly concedes that there are contradictions in the evidence of the victim.

6. Bail is the rule and the committal to jail is an exception. Refusal of bail is a restriction on the personal liberty of the individual, guaranteed under Article 21 of the Constitution of India. The object of keeping the accused person in detention during the trial is not punishment. The main purpose is manifestly to secure the attendance of the accused. At this stage, it would be inappropriate to discuss the evidences in depth or meticulous examination of the evidences. There is nothing on record to indicate that the applicant had earlier been involved in any unacceptable activity.

7. Having considered the submissions of learned counsel for both the parties and in the facts and circumstances of the case, there is no reason to keep the applicant behind the bars for an indefinite period, therefore, without expressing any opinion as to the merits of the case, this Court is of the view that the applicant deserves bail at this stage.

8. The bail application is allowed.

9. Let the applicant be released on bail on his executing a personal bond and furnishing two reliable sureties, each in the like amount to the satisfaction of the court concerned subject to the following conditions :-

i) the applicant shall attend the trial court regularly;

ii)the applicant shall not seek any unnecessary adjournment on the date fixed for remaining evidence of the prosecution;

iii) the applicant shall not leave the India without prior permission of the trial court.

10. It is clarified that if the applicant misuses or violates any conditions, imposed upon him, the prosecution shall be free to move the court for cancellation of bail.

(Alok Kumar Verma, J.)
15.05.2020

JKJ/Neha