

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34359 of 2024

Applicant :- Ahsan

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mohd Aadil Siddiqui

Counsel for Opposite Party :- G.A.,Narendra Kumar

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Mohd Aadil Siddiqui, learned counsel for the applicant, learned Additional Government Advocate for the State, Mr. Narendra Kumar, learned counsel for the informant and perused the material available on record.

2. By means of this application, the applicant is seeking enlargement on bail in Case Crime No.197 of 2024, under Sections 363, 376, 511 IPC and Section 9M, 9U/10 POCSO Act, Police Station Katghar, District Moradabad.

3. In short, the prosecution story in brief is that on 21.04.2024 at around 3 o'clock in the day, a spectacle was going on in front of the informant's house and hearing the sound, the informant's daughter, _____ aged about 4 years went to see the show. After some time, the people of the locality informed him that _____ is being forcibly taken away by applicant Ahsan. At that time, the informant informed her mother-in-law, _____ and _____ were called by _____ and went out to search the child. It is further alleged that after crossing the railway gate, a sound of crying came from the direction of the trees and when they went closer and looked, they saw the accused Ahsan, who was wrapped up with child with wrong intentions and clothes of the child were torn and there were cut marks on her cheeks and back, waist and mouth. The child was in unconscious state, an attempt was also made to rape. It is further alleged that seeing the informant and others, the accused Ahsan ran away from the spot.

4. Contention as raised at the Bar by learned counsel for the applicant is that applicant-accused is quite innocent and has been falsely implicated in the present case. The applicant has never committed any offence as alleged in the impugned FIR. There is

no eye witness of the alleged incident has been produced to support the prosecution story. The incident is alleged to have occurred on 21.04.2024 whereas the impugned FIR has been lodged on 27.04.2024 i.e. after six days for which no explanation of delay has been mentioned. Earlier the applicant has moved an application against Waseem, who is deaver of the informant, alleging therein that on fateful day when the daughter of applicant returning from a shop and when she reached at the front house of Waseem, he has done obscene act with his daughter and after raising alarm, Waseem ran away and entered into his house. Due to non action of the police, the father of the applicant moved a complaint case, due to this reason, the informant cooked up a false and concocted story and lodged the FIR. Further contention is that there is material contradiction in the statement under Sections 161 and 164 Cr.P.C. as well as version of the FIR and also medical report not corroborated, which creates serious doubt in the entire prosecution story. As per medical report, no mark of any external and internal injury seen all over the body of the victim. Prima facie no offence is made out against the applicant.

5. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required. Lastly, it is argued that the applicant is languishing in jail since 31.5.2024 having previous criminal history which has been explained in paragraph 34 of the affidavit.

6. Per contra, learned A.G.A. as well as learned counsel for the informant have vehemently opposed the prayer for bail to the applicant by contending that the victim is a minor child aged about 4 years. The act committed by the accused-applicant as mentioned in the F.I.R. is a heinous offence. Applicant is a criminal having previous criminal history of four cases. There is no reason to falsely implicate the applicant. Innocence of the applicant cannot be ad-judged at pre-trial stage, hence, the bail application of the applicant is liable to be rejected.

7. In the present case, a small innocent child aged about 4 years has been tried to commit rape even who does not understand its meaning. In our country, little girls are worshiped. Rape is a heinous crime and this type of cases are increasing day by day in our society. The Court again and again observed that this type of

act is not only a crime against the victim, it is a crime against the society as well and is also violative of victims most cherished of fundamental rights, mainly right to life contained in Article 21 of the Constitution of India. In such a situation, if the right decision is not taken from the Court at the right time, then the trust of a victim/common man will not be left in the judicial system.

8. The victim is aged about 4 years at the time of alleged offence. She has supported the prosecution story in her statement recorded under Sections 161 and 164 Cr.P.C.

9. Considering the facts and circumstances of the case as well as submission advanced by learned counsel for the parties, nature of allegations, role assigned to the applicant, gravity of offence and all attending facts and circumstances of case, particularly, seeing the fact that the applicant has committed rape upon a four years minor girl, this Court is of the opinion that it is not a fit case for bail.

10. Accordingly, the bail application is **rejected**.

11. However, considering the facts and circumstances of the case as well as considering the submissions advanced by learned counsel for the applicant, the court below is directed to expedite the trial of the aforesaid case expeditiously, preferably within a period of one year from the date of production of certified copy of this order.

Order Date :- 15.10.2024

Ajeet