

A.F.R.**Court No. - 80****Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37253 of 2021****Applicant :- Chndra Prakash Sharma****Opposite Party :- State Of U.P And Another****Counsel for Applicant :- Virendra Pratap Singh, Anurag Rai, Birendra Singh****Counsel for Opposite Party :- G.A.****Hon'ble Sanjay Kumar Singh, J.**

1- Heard Mr. Virendra Pratap Singh, learned counsel for the applicant, Mr. Rabindra Kumar Singh learned Additional Government Advocate assisted by Mr. Ajay Singh, learned Brief holder representing the State.

2- By means of this application under Section 439 of Cr.P.C., applicant, who is involved in Case Crime No. 219 of 2021, under Sections 354, 376 IPC and Sections 5/6 POCSO Act, police station Bansaon, district Gorakhpur seeks enlargement on bail during the pendency of trial.

3- As per prosecution case, in brief, the complainant, who is mother of the victim lodged the first information report on 16.07.2021 at 17:07 hours with regard to an incident which took place on 16.07.2021 against the applicant Chandra Prakash Sharma for the alleged offence under Sections 354, 376 IPC and Sections 5/6 POCSO Act alleging inter alia that today on 16.07.2021, her daughter aged about 8 years went beside her house to pluck guava from guava tree where the applicant was kissing her daughter by sitting her on his lap and thereafter raped her by took off her panty. She came home and told the entire incident to her and her mother-in-law. Thereafter, on the same day, i.e., on 16.07.2021, the victim was medically examined in which doctor opined that sexual violence cannot be ruled out. Victim in her statements under Section 161 and 164 Cr.P.C. has made allegation of rape against the applicant reiterating the prosecution case as mentioned in the first

information report. The statement of the victim recorded under Section 164 Cr.P.C. is reproduced herein below:-

"बयान अन्तर्गत धारा 164 आज दिनांक 28/07/2021 को उपरोक्त मुकदमा की बाल पीडिता X को फोटो और हस्ताक्षर प्रमाणित कर थाना बांसगांव जनपद गोरखपुर के विवेचक मय महिला आरक्षी द्वारा बयान अन्तर्गत धारा 164 दं.प्र.सं. हेतु प्रस्तुत किया गया है बाल पीडिता की उम्र 7 वर्ष है तथा उसकी मनोदशा जानने हेतु निम्न प्रश्न पूछे गये हैं बाल पीडिता अपनी मां के साथ न्यायालय में उपस्थित है।

प्रश्न : तुम्हारा नाम क्या है

उत्तर : X

प्रश्न : तुम्हारे पिता का नाम क्या है

उत्तर : सोनू चौहान

प्रश्न : तुम किस कक्षा में पढ़ती हो

उत्तर : कक्षा 2

प्रश्न : तुम आज किस रंग का कपड़ा पहनी हो

उत्तर : लाल

प्रश्न : तुम्हारा उम्र क्या है

उत्तर : 7 वर्ष

प्रश्न : झूठ बोलना गलत है या नहीं

उत्तर : गलत

बाल पीडिता बयान हेतु सक्षम है बाल पीडिता का बयान प्रश्नोत्तर रूप में अंकित किया जा रहा है।

प्रश्न : तुम्हारे साथ क्या घटना हुयी थी

उत्तर : बाल पीडिता पूछने पर बता रही है कि मैं और मेरी दोस्त अंशिका अमरुद खाने के लिये गये थे अंशिका पेड पर चढ़ गयी और मैं नीचे खडी थी तभी एक लडका मुझे खींच लिया मैं जब पीछे उसको देखी और चिल्लाने की कोशिश की तो वह मेरा मुह दबा दिया

और शौचालय के पीछे ले गया अपना भी पैण्ट खोल दिया और मेरा भी मेरा चढ़ी खोल कर छूने लगे और अपना शूशू मेरे अन्दर डालने लगा मेरे साथ गलत काम किया मैं किसी तरह अपना हाथ छुड़ा कर भाग आयी ।

प्रश्न : क्या तुम लड़का का नाम जानती हो

उत्तर : हा मेरी मम्मी बताई है उसका नाम चन्द प्रकाश है

प्रश्न : कुछ और कहना है

उत्तर : मैं जब भागने लगी तो वह लड़का मुझे पकड़ने का कोशिश किया मेरी मां जब चन्द प्रकाश को डाटने के लिये पहुची तो मेरी मां को भी मारा

प्रश्न : घटना की सूचना किसको दिया

उत्तर : घटना के बारे मे मैंने दादी को बताया

ह. पीडिता ह. अप. उपरोक्त लेखबद्ध बयान मेरे द्वारा पीडिता को पढकर सुनाया तथा समझाया गया जिसे उसने अक्षरशः सही होना बताया पीडिता ने अपना बयान अपनी स्वेच्छा से देना बताया है बयान का अवलोकन किया गया।"

4- It is submitted by learned counsel for the applicant that the applicant has been falsely implicated in this case. No mark of injury has been found on the body of the victim and hymen of the victim was found intact and no fresh injury or bleeding was seen at the time of her medical examination. The victim in her statement under Section 164 Cr.P.C. has not stated that the applicant has committed rape on her, as such, no offence is made out against him. The applicant does not have criminal history to his credit. His bail application has been wrongly rejected by the concerned Court below. Lastly, it is submitted by learned counsel for the applicant that the applicant is languishing in jail since 17.07.2021 and in case, the applicant is released on bail, he will not misuse the liberty of bail and cooperate with the trial.

5- Per contra, learned A.G.A. assisted by learned Brief Holder for the State opposed the prayer for bail of the

applicant by contending that the first information report was lodged by mother of the victim on the narration of the incident by the victim who is minor child aged about 8 years and is a student of Class 2. It is next submitted that act committed by the accused-applicant as mentioned in the F.I.R. and disclosed by the victim in her statement under Section 164 Cr.P.C. is a heinous offence and comes within the ambit of rape as defined under Section 375 I.P.C. as well as under the ambit of Sections 5/6 POCSO Act. There is no reason to falsely implicate the applicant. Learned A.G.A. next submitted that it is well settled by the Apex Court in the case of **Madan Gopal Kakkad Vs. Naval Dubey and another, (1992) 3 SCC 204** that even slightest penetration of penis into vagina without rupturing the hymen would constitute rape. He further submitted that in this case, the applicant not only violates the victim's personal integrity, but leaves indelible marks on the very soul of the helpless child. Innocence of the applicant cannot be ad-judged at pre-trial stage. Hence, bail application of the applicant is liable to be rejected.

6- Having heard learned counsel for the parties, this Court is of the view that in this case, a small innocent child aged about 8 years has been raped, who does not understand its meaning. Little girls are worshipped in our country, but the cases of paedophilia are increasing. Rape is a heinous crime. The victim suffers from psychological effects of embarrassment, disgust, depression, guilt and even suicidal tendencies. Many cases go unreported. In almost rape cases, the victim was unwilling to report the name of the abuser. The families of the victim remain silent about the sexual offences in order to protect the family image. The victim/female small child experience sexual abuse once tend to be more vulnerable to abuse in adult life. Healing is slow and systematic. Rape is not only a crime against the victim, it is 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.

7- I also find that if rape is committed by a man on a little girl under twelve years of age, according the provisions of Section 376A-B of Indian Penal Code, he shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which means that the accused shall be in prison for the remainder of his natural life, and with fine or with death.

8- Having examined the matter in its entirety I do not find any material or cogent reason at this stage to presume the false implication of the applicant. I am also of the considered view that the depth of penetration is immaterial in an offence punishable under Section 376 I.P.C.

9- Having considered the facts and circumstances of the case, nature of offence, the gravity involved therein and the manner in which the crime has been committed, no case for bail is made out.

10- The application for bail is hereby **rejected**.

11- However, it is clarified that the observation, if any, made herein above shall be strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

12- Office is directed to send the copy of this order to the complainant as well as concerned Court below within two weeks.

Order Date :- 7.4.2022

Shubham