

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3056 of 2022

Applicant :- Mahendra Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Bahadur Singh

Counsel for Opposite Party :- G.A.,Jai Raj,Mrityunjay Singh

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Ram Bahadur Singh, learned counsel for the applicant, Gautam Pandey, Advocate holding brief of Jai Raj, learned counsel for complainant, P.K.Bhardwaj, learned A.G.A. and perused the record.

2. Applicant is seeking bail in case crime no.52 of 2021 under Sections 376 AB, 323, 506 I.P.C. and 5M/6 Pocso Act, Police Station-Refinery, District-Mathura after rejection of his bail application vide order dated 16.6.2021, passed by learned Additional Sessions Judge/Special Judge (POCSO Act), Mathura.

3. Facts of the present case are shocking. There are allegations of rape against father who allegedly committed aforesaid offence against her daughter aged about 11 years. The victim has supported the prosecution version in her statement recorded under Section 164 Cr.P.C.

4. Learned counsel for the applicant submitted that there was a matrimonial dispute between the applicant and her mother though the applicant is taking care of his four children, (all daughters). However, in order to take revenge and to harass the applicant, this F.I.R. was lodged by mother of the victim. It is a case of false implication. It is further submitted that father will not commit such an offence when he is taking care of his four daughters and there is no complaint whatsoever by other children. The applicant is languishing in jail since 16.2.2021, there is no likelihood of early disposal of trial and the applicant undertakes that if enlarged on bail, he will never misuse his liberty and will co-operate in the trial.

5. Opposing the bail application, learned A.G.A. relied upon statement of victim recorded under Section 164 Cr.P.C. wherein she has narrated the ordeal given by her father.

6(A). Law on bail is well settled that 'Bail is a rule and jail is an exception'. Bail should not be granted or rejected in a mechanical manner as it concerns liberty of a person. At the time of considering an application for bail, the Court must take

into account certain factors such as existence of a prima facie case against the accused, gravity of the allegations, severity of punishment, position and status of the accused, likelihood of the accused fleeing from justice and repeating the offence, reasonable apprehension of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused.

(B). It is also well settled that the Court while considering an application for bail must not go into deep into merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered.

(C). It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. The Court should record the reasons which have weighed with the court for the exercise of its discretionary power for an order granting or rejecting bail. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

7. The facts of the case are not only shocking but are inhuman also. Applicant who is father of the victim has committed the offence of rape with her daughter aged about 11 years and she has supported the prosecution case in her statement recorded under Sections 161 and 164 Cr.P.C.

8. Considering that it is a case where minor has been subjected to such cruelty by the hands of his father, (applicant), therefore, he is not entitled for any relief.

9. The bail application is rejected.

Order Date :- 9.5.2022-SB