

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27038 of 2022

Applicant :- Manoj Saxena

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Umesh Pal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

Counter affidavit filed by the learned A.G.A., is taken on record.

Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.

The accused- applicant, Manoj Saxena, is involved in Case Crime No.189 of 2022, under Sections 376A, B, 354 I.P.C. & 9D/10 POCSO Act & 3(2)V SC/ST Act, Police Station Civil Line, District- Badaun.

It is submitted by the learned counsel for the applicant that there is general allegation in the FIR. In the statements under Sections 161 and 164 Cr.P.C. of the victim, there is no ingredient of Section 376 I.P.C. No medical has been conducted as the parents of the victim denied to get her daughter medically examined. No injury has been found on the person of the victim. In fact the father of the victim is a police personnel and this FIR is only the misuse of that power. The applicant is 50 years of age so the incident appears to be suspicious. He is languishing in jail since 13.04.2022 and in case he is enlarged on bail he will not misuse the liberty of bail. Hence, bail has been prayed for.

Learned A.G.A. has opposed the bail application and submitted that as per medical report, the victim is 10 years of age and as per school leaving certificate the age of the girl is seven years.

From the perusal of the FIR, it appears that in the absence of other family members when eight years old victim was alone at her home and when she saw her TV dish connection was disturbed, she called Manoj Saxena (applicant), the person who used to go to repair the dish connection. When Manoj Saxena (applicant) came inside the house, he saw the girl alone at her home, he started vulgar activities with her. The victim made hue and cry then he ran away from the house. In the statement under Section 161 Cr.P.C. the victim has stated that when Manoj Saxena came in the house of the first informant to repair the dish connection, seeing the girl alone at her home he inserted

his hand in her clothes and kissed her on lips. As per statement under Section 164 Cr.P.C. of the victim, Manoj Saxena came at the house of the first informant repaired the dish connection then hold her tightly and kissed on her lips, inserted his hand into her panty and also pressed her breast by inserting her hands therein.

Admittedly, the parents of the victim have denied for any medical examination of the victim.

Having heard the submissions of learned counsel of both sides, considering the seriousness of the charge and the severity of punishment in case of conviction and the nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment, and larger mandate of the Article 21 of the Constitution of India, the dictum of Apex Court in the case of **Dataram Singh v. State of U.P. and another, reported in (2018) 2 SCC 22** and without expressing any opinion on the merit of the case, I find it to be a case of bail.

Let the applicant, **Manoj Saxena**, who is involved in aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

1. The applicant will attend and co-operate in the trial pending before the court concerned on the date fixed after release.
2. He will not tamper with the witnesses.
3. He will not indulge himself in any illegal activities during the bail period.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Order Date :- 2.9.2022

Radhika