

Court No. - 53

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Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9120 of 2021

Applicant :- Kishan Upadhyaya

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

Counsel for Applicant :- Shyam Lal, Abhilasha Singh, Ashutosh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record. None has appeared on behalf of first informant despite service of notice.

The present bail application has been filed by the applicant in case crime No. 531 of 2020, under Sections 305, 341, 376D IPC and Section 4 POCSO Act & 3(2)(V) SC/ST Act, P.S. Kotwali Karvi, District Chitrakoot, with the prayer to enlarge him on bail.

According to prosecution version, on 08.10.2020 at 1:30 when first informant returned to her home from her field, she found that her 15 years old daughter was missing and while making search, she saw that her daughter was lying in nursery and her hands and feet were lying tied. Her daughter told the informant that three persons have brought her there and the informant came to know that applicant and co-accused persons have committed rape upon her. It was alleged that due to the incident dated 08.10.2020, on 13.10.2020 deceased committed suicide.

It has been argued by the learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case. As per prosecution version, alleged incident of molestation of deceased girl has taken place on 08.10.2020 but after that incident, no report was lodged and that the FIR has been lodged on 13.10.2020 after deceased has committed suicide. In the first information report, there is no such version that after the incident dated 08.10.2020, the first informant has informed the police or that any video of statement of deceased was prepared and thus, it is afterthought version, which

has been introduced during investigation. Learned counsel submitted that in the case diary, in the transcription of statement of deceased girl, which was recorded in the video, she has mentioned the name of co-accused Ashish only and she has also stated that she was only tied by the accused persons and no bad act was done with her and that they were only saying that they would commit bad act with her. It was submitted that statement of informant, that her daughter (deceased) has told the name of applicant, is false as no such fact has been mentioned in the statement of deceased, which was recorded in a video. Learned counsel has also referred the statement of constable Rohit Kumar and Raghvendra Kumar, who have allegedly reached at the spot on 08.10.2020, and they have merely stated that deceased was found lying in tied position and that they have prepared a video of the victim girl and except that they have not made any such statement that victim has named the applicant or any of the accused. Learned counsel submitted that in view of above stated facts and circumstances of the case, there is no cogent evidence against the applicant and that he has been falsely implicated merely on the basis of suspicion. It was also stated that no motorcycle has been recovered and that there is no suicide note of deceased. It has been further submitted that the applicant is languishing in jail since 15.10.2020, having no criminal history and that in case the applicant is released on bail, he will not misuse the liberty of bail and cooperate in Trial.

Learned A.G.A. has opposed the prayer for bail and argued that deceased was a 15 years old girl and that on 08.10.2020 she was forcibly taken away by the applicant and co-accused persons and thereafter she was tied and molested by accused persons and after that due to that incident, on 13.10.2020 she has committed suicide. The first informant has clearly stated in her statement that the victim girl has told that applicant and two co-accused persons have committed rape upon her and that after incident deceased used to say that due to act of accused persons she is very depressed and that she has no desire to live.

Perusal of record shows that victim was a 15 years old girl. The first informant has clearly stated that on 08.10.2020 her daughter was found in tied condition and that she has reached at the spot and she has seen the applicant and co-

accused Ashish at the spot and after that incident, the victim has told her that the applicant and two co-accused persons have committed rape upon her and due to that incident she was quite depressed and sad and she has lost her desire to remain alive and on 13.10.2020 she has committed suicide. It is correct that in the transcription of the alleged statement of the victim, which was recorded in a video, it has been mentioned that accused persons have only tied her and no bad act was done with her and they were threatening to commit rape upon her and that there were three persons and one of them was Ashish, but here it may be observed that said statement of victim was not recorded in accordance with law and procedure. The informant has clearly stated that her daughter has told her she was raped by applicant and two co-accused persons.

Considering the submissions of learned counsel for the parties, nature of accusations, gravity of offence and all attending facts and circumstances of case, no case for bail is made out. Hence the bail application of applicant Kiashan Upadhyaya is hereby **rejected**.

Before parting with this order, this Court is constrained to observe that police have dealt with the incident dated 08.10.2020 in a very casual and insensitive manner. It is apparent from record that on 08.10.2020 when the 15 years old daughter of informant was found in tied condition in jungle (Nursery) and the husband of informant has informed the police of Police Post, Saraiyan, Chitrakoot but instead of proceeding to the spot or registering a case, S.I. Anil Kumar Sahu has sent constable Rohit Kumar and Raghvendra to the spot, who have just got prepared a video of the victim girl while she was being untied. It is shocking that the police did not register a case on the information of the incident dated 08.10.2020 and no action was taken against any of the accused persons, who were present at the spot. The statement of victim girl was not recorded in accordance with law. Mere preparation of alleged video of victim girl by a police constable, can not be termed a statement of victim. The Police have adopted a novel way of investigation, which was totally alien to the law and well established norms of investigation. It is painful to see that on 08.10.2020 after receipt of information regarding molestation of a 15 years old girl, the matter

was dealt with by the police in such casual and insensitive manner and resultantly on the fifth day of that incident, victim girl has ended her life by committing suicide.

In view of these facts and circumstances, the Superintendent of Police, District Chitrakoot is directed to take strict action against the erring police officials, who are responsible for dealing the matter of incident dated 08.10.2020 in such a casual and insensitive manner and shall file an Action taken report before the Registrar General, Allahabad High Court, within a period of one month from the date of receipt of copy of this order.

Office is directed to send a copy of this order to the S.P. Chitrakoot for compliance.

It is clarified that any observation made in this order, would have no bearing on trial of the case.

Order Date :- 17.8.2021

A. Tripathi