

A.F.R.

Court No. - 72WWW.LIVELAW.IN**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1665 of 2021**Applicant :-** Jasman Singh @ Pappu Yadav**Opposite Party :-** State of U.P. and Another**Counsel for Applicant :-** Bhagwan Das**Counsel for Opposite Party :-** G.A.**Hon'ble Sanjay Kumar Singh, J.**

1-Despite being service of notice upon the informant, no one has put in appearance on behalf of informant.

2-Heard Mr. Bhagwan Das, learned counsel for the applicant, Mr. Virendra Kumar Maurya, learned Additional Government Advocate assisted by Mr. Prashant Kumar Singh, learned brief-holder, representing the State and perused the record of the case.

3-By means of this application, applicant-Jasman Singh alias Pappu Yadav, who is involved in Case Crime No. 30 of 2019, under sections 323, 376(2)(1), 452 and 506 IPC, and section 3/4 of Protection of Children From Sexual Offences Act, police station Jakhaura, district Lalitpur, seeks enlargement on bail during the pendency of trial.

4-As per prosecution case, in brief, Smt. Kalawati, the informant, who is aunt of the victim lodged first information report on 17.02.2019 at 1.15 hours in respect of incident, which took place on 16.02.2019 at 16.30 hours against the applicant alleging inter alia therein that on 16.02.2019 at about 4.30 p.m. the victim, aged about 13 years, who after the death of her mother residing with the informant, was alone in the house for doing some house-hold work and all the family members had gone to agricultural field for cutting fodder. The applicant taking the advantage of the situation, forcibly entered into the house of the informant and threatening to kill the victim, she was dragged to inside the room by grabbing her hair, and forcibly committed rape upon the victim. At that

time, suddenly the informant, her son Rohit and one Magan came to the house and knocked the door, but when they entered the house, they saw the victim lying unconscious in a naked condition and the applicant tried to fled away by climbing the wall, but he was caught hold by Rohit, Magan Vishwakarma, Arjun and Madhav alias Chotu at the spot. When the victim gain consciousness, she narrated the whole incident. Thereafter, the police was informed about the incident on phone by the family members of the informant, on which the applicant was arrested by the police from the house of the informant.

5-It is argued by the learned counsel for the applicant that there was love affair between the victim and the applicant. She herself called the applicant, but he was caught hold by the family members of the victim. It is also submitted by the learned counsel for the applicant that there is also dispute between the informant and the applicant regarding the land, therefore, the applicant has been falsely implicated in the present case, averment in this regard has been mentioned in paragraph 14 of the bail application. It is also submitted that the applicant has no criminal antecedent to his credit and is facing detention since 16.02.2019. It is next contended that there is no chance of the applicant of fleeing away from the judicial process or tampering with the prosecution evidence. Learned counsel for the applicant lastly submitted that if the applicant is released on bail, he will not misuse the liberty of bail and will cooperate in the early disposal of the case.

6-Per contra, learned Additional Government Advocate has opposed the bail prayer of the applicant by contending that as per medical examination report, the victim is minor child, aged about 13 years. The applicant has committed rape upon the victim in her own house and he was apprehended by the family members of the victim at the spot. It is also submitted that the victim in her statement under section 164 Cr.P.C. has made allegation of committing rape upon her forcibly by the applicant and also supported the prosecution case. It is next submitted by learned

A.G.A. that the applicant has a criminal history of six cases, as mentioned in bail rejection order of the applicant dated 23.10.2020, but in paragraph 19 of the bail application, it is mentioned that the applicant has no criminal history.

7-After having heard the arguments of learned counsel for the parties, this Court finds that the applicant has a criminal history of six cases as mentioned in bail rejection order of applicant dated 23.10.2020, but in paragraph 19 of the bail application it is mentioned that the applicant has no criminal history, as such the applicant has not come with clean hands before this Court and suppressed his criminal history. In paragraph 14 of the bail application, it is mentioned that there is dispute between the applicant and informant regarding the land, but no material in this regard has been brought on record. The victim, aged about 13 years, is studying in fifth standard. According to medical examination report of the victim, all epiphysis are not fused. In the opinion of the doctor, who conducted the medical examination of the victim, sign of violence seen and sexual violence cannot be ruled out. The offence of committing rape upon a minor child is heinous in nature.

8-In view of judgment of Hon'ble the Apex Court in the case of *Neeru Yadav vs. State of U.P.* (2015) 3 SCC 527, criminal antecedents of the accused cannot be ignored while deciding bail application, discretionary powers of Courts to grant bail must be exercised in a judicious manner in case of a habitual offender. The said judgement has been further followed in a recent judgment of Apex Court in the case of *Sudha Singh vs. State of U.P. and another*, 2021 (4) SCC 781.

9-In this case, a small innocent girl has been raped, who does not understand its meaning. Little girls are worshiped in our country, but the cases of pedophilia 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. 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. This is the time to strictly stop this kind of crime.

10-Considering the facts and circumstances of the case, submissions advanced on behalf of parties, gravity of the offence and severity of the punishment, I do not find any good ground to grant bail to the applicant.

11-Accordingly, the bail application is rejected.

12-However, it is clarified that the observation, if any, made here-in 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.

13-Office is directed to send a copy of this order to the informant of this case within two weeks.

14-It is directed that in case, certified copy of this order is not issued due to COVID-19 pandemic, the copy of the order downloaded from the official website of the Allahabad High Court shall be acted upon.

Order Date :- 17.8.2021

Sazia