

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29765 of 2021

Applicant :- Sunil

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

Counsel for Applicant :- Manoj Kumar Srivastava, Ajai Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Ajai Kumar, learned counsel for applicant and Sri K.P. Pathak, learned A.G.A. for State.
2. Applicant-Sunil, has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. after rejection of his Bail Application vide order dated 15.06.2021, passed by Special Judge (POCSO Act)/ Additional Sessions Judge, Kannauj, in Case Crime No.194 of 2021, under Section 376 I.P.C. and 5/6 POCSO Act, Police Station Kannauj, District Kannauj.
3. The applicant is seeking bail for allegedly committing an offence which is shocking and inhuman. It is alleged that applicant, a Carpenter, committed offence of rape with the victim, a minor girl of three years old. The medical examination of the victim shows that her hymn was torn and there were swelling over labia majora and tenderness present over genitalia. Victim in her statement recorded under Section 164 Cr.P.C. has communicated by words and also by action that applicant has raped her and blood was oozing out from her private parts. The applicant was apprehended from the spot and a named FIR was lodged against him.
4. Learned counsel for the applicant submits that applicant is a 62 years old person. There was a delay of about five days in lodging the FIR. He was falsely implicated in the present case. He was doing some job of Carpentry in the house of father of

victim, however there was dispute on payment of wages. The applicant has no prior criminal antecedents and he is in jail since 15.03.2021.

5. Learned A.G.A. appearing for State has opposed the bail and drawn attention of this Court on the contents of FIR as well as the statement of victim recorded under Section 164 Cr.P.C. wherein she completely corroborated the prosecution case.

6(A) Law on bail is well settled that 'Bail is rule and Jail is 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 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 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. 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.

(C) 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. In the background of above facts and legal position of the present case, it is prima facie evident that the applicant has committed an inhuman act of rape on a minor girl of three years. The victim has narrated her ordeal in words as well as in signs and explained the entire incident of rape committed by the applicant. Medical report shows that victim's hymen was torn and there was swelling on her private parts. The applicant, who has prima facie, committed a heinous crime of rape on a three years old minor girl, is not entitled for bail.

8. The application is accordingly rejected.

Order Date :- 15.3.2022

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