A.F.R.

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22078 of 2021

Applicant :- Bhootnath
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Amit Kumar Srivastava
Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard Mr. Amit Kumar Srivastava, learned counsel for the applicant, Mr. Rabindra Kumar Singh, learned Additional Government Advocate assisted by Mr. Rajmani Yadav, brief holder representing the State and perused the record of the case.

2-By means of this application, applicant-Bhootnath, who is involved in Case Crime No. 84 of 2019, under sections 376, 323, 363 IPC and section 3/4 of The Protection of Children from Sexual Offences Act, police station Jafarganj, district Fatehpur, seeks enlargement on bail during the pendency of trial.

3-As per prosecution case, in brief, the first information report dated 01.06.2019 has been lodged by informant- Keshanlal Sonkar under section 363 IPC against unknown person alleging inter alia that on 01.06.2019 at about 4.00 a.m. her daughter, whose date of birth is 12.10.2002 had gone to attend the call of nature, but did not return home.

4-It is submitted by learned counsel for the applicant that the applicant is absolutely innocent and has falsely been implicated in the present case with some ulterior motive. The FIR has been lodged against unknown person. It is further submitted by learned counsel for the applicant that as per medical examination report of the victim, she is about 18 years. The

medical examination report does not support the prosecution story. It is next submitted by the learned counsel for the applicant that the applicant is well acquainted with the family members of the victim and he used to come to her house, therefore, the victim has developed illicit relations with the applicant and as such she was consenting party with the applicant. There are contradictions in the statements of the victim recorded under sections 161 and 164 Cr.P.C. As per medical examination report of the victim, no injury has been found on her body. It is also submitted that the applicant has no criminal antecedent to his credit and is facing detention since 05.07.2019. 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.

5-Per contra, learned Additional Government Advocate has opposed the bail prayer of the applicant by contending that the applicant is well acquainted with the family members of the victim and had used to come to the house of the informant. The applicant is a sage and it is not expected by a sage of committing such a heinous crime with a girl, who has reverence and faith on him. The victim was recovered after one month on 02.07.2019 from the possession of the applicant (Bhootnath alias Ramdas alias Babaji) from district Jamnagar, Gujarat with the help of local police of Jamnagar. The applicant was arrested on 02.07.2019 and after obtaining transit remand order dated 02.07.2019 from the court of Chief Judicial Magistrate, Jamnagar, he was brought and produced on 05.07.2019 before the concerned court of district-Fatehpur, U.P. In her statement under sections 161 and 164 Cr.P.C. the victim has stated that

she has been forcibly enticed away by the applicant and also made allegation of committing rape upon her against the applicant. She has also stated in her statement under section 161 Cr.P.C. that the applicant used to give her some medicines, due to which she fallen asleep. It is also alleged by the victim that the accused also assaulted her by danda and chimta (tong). As per FIR and her Aadhar Card, victim is minor, as her date of birth is 12.10.2002. On 05.07.2019, sections 376, 323 IPC and 3/4 of Protection of Children from Sexual Offences Act were added by the Investigating Officer. It is next contended by the learned A.G.A. that it is a heinous crime. It is next argued that absence of injuries on private part or other part of body of victim would not rule out her being subjected to rape. Lastly, it is submitted that the innocence of the applicant cannot be adjudged at pre trial stage therefore, the applicant does not deserve any indulgence. In case, the applicant is released on bail, he will misuse the liberty of bail.

6-As per section 2(1)(d) of the Protection of Children from Sexual Offences Act 2012, "Child" means any person below the age of eighteen years. The Apex Court in the matter of ***Ms. Eera through Dr. Manjula Krippendorf vs State (Govt. of NCT of Delhi) and another***, reported in *AIR 2017 SC 3457* has held that use of word "age" in section 2(1)(d) of Protection of Children from Sexual Offences Act only includes biological/physical age and not mental age of child. The degree of understanding of child can never be put in straight jacket formula. In this case, a heinous crime of kidnapping and rape has been committed with a child/girl by the accused, who is a sage (Baba) aged about 50 years and was known to victim's father and used to visit her house, ergo he must suffer for its consequences. On account of these kind of incidents, faith and trust on the person is decreasing. A rapist not only violates the

victim's personal integrity, but leaves indelible marks on the very soul of the helpless female. In this case, a hapless girl had been ravished by the accused. The act of sexual assault induces trauma and horror for any girl or regardless of her social position in the society. A child/girl, who is the victim of sexual assault, is not an accomplice to the crime, but is victim of another person's lust and therefore, her statement need not be tested at this stage with the same amount of suspicion as that of accomplice. As a matter of fact, the crime is not only against the victim, it is against the whole society as well. It demands just decision from the Court and to such demand, the Courts of law are bound to respond within the legal parameters.

7-Considering the facts and circumstances of the case, submissions advanced on behalf of parties, gravity of the offence, severity of the punishment and the manner in which the offence has been committed, I do not find any good ground to grant bail to the applicant.

8-Accordingly, the bail application is rejected.

9-However, it is clarified that the observation, if any, made herein 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.

Order Date :- 26.8.2021

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