

**Court No. - 68**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 28237 of 2024

**Applicant :-** Kuldeep

**Opposite Party :-** State Of Up And 3 Others

**Counsel for Applicant :-** Arun Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Krishan Pahal,J.**

1. Heard Sri Arun Kumar Singh, learned counsel for the applicant and Ms. Ifrah Islam, learned State Law Officer for the State and perused the record.
2. As informed by learned State Law Officer, notice to the informant has been served on 28.07.2024 but none is present on behalf of the informant
3. Applicant seeks bail in Case Crime No.185 of 2020, under Sections 376AB I.P.C. read with Section 5(i)/6 of POCSO Act, Police Station Kakwan, District Kanpur Nagar, during the pendency of trial.

**PROSECUTION STORY:**

4. The applicant is stated to have taken away the minor daughter of the informant aged about 13 years on 29.11.2020 to an agricultural field and committed rape with her.

**Arguments on behalf of applicant :**

4. The applicant is absolutely innocent and has been falsely implicated in the present case due to money transaction between the informant and the applicant.
5. The statement of the victim recorded during trial as PW-2 categorically indicates that she was tutored by the police, as such her statement cannot be relied upon.
6. As per the statement of the doctor during trial, she has categorically stated that the victim was referred to the C.M.O for ascertaining her age but there is nothing on record to suggest that the said medical examination for ascertaining her age has been undertaken by the authorities.
7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been

touched upon at length.

8. Another ground is the period of incarceration undergone by the applicant and he is in jail since 01.12.2020 and the fundamental rights of the applicant stands violated. The period of detention comes out to be marginally less than four years. As such, the applicant is entitled for bail.

**Arguments on behalf of State :**

9. The bail application has been opposed on the ground that the injuries sustained by the victim are of such grave that it would shock the conscious of any person of normal prudence. The victim was even operated on her injuries.

10. The statement of the victim is contested one and she has categorically stated that the applicant had subjected her to sexual assault and she has also identified the applicant under dark during her examination. Her age was 12 years as per the medical examination report.

**CONCLUSION :**

11. The injuries sustained by the victim are being reproduced as follows :-

- (i) Abrasion present around meatus ;
- (ii) Blood spots were present at labia majora ;
- (iii) Multiple abrasions and cuts present all around vulva ;
- (iv) Fourchette and introitus torn ;
- (v) Hymen Torn;
- (vi) Perineum torn upto anus, only skin around anus was intact ;
- (vii) Posterior vagina was completely torn ;
- (viii) Rectal mucosa is also torn ;
- (ix) Complete perineum tear present ;
- (x) Only stem around anus intact.

12. The victim was operated upon at the Obstetric Care Centre and her complete perineum tear repair was done with sigmoid colostomy. The primary repair of rectum perineal and vaginal valve by pediatric surgery team was also conducted and the victim was discharged after treatment for 15 days.

13. The instant case concerns the rape of a minor child aged about 12 years. This offence stands as one of the most diabolical and heinous crime imaginable, reflecting an alarming degree of moral and psychological depravity. Such acts are not only a violation of the individual but of the very essence of humanity.

14. The medical injury report and the treatment history presented in the case is profoundly disturbing. Its contents would shake the conscience of any reasonable person, no matter how hardened. The gravity of the injuries inflicted upon the victim speak to the brutality and inhumanity of the accused's actions, leaving no room for doubt regarding the nature of the crime.

15. Crimes of this nature represent a severe breach of the societal order. The innocence of a child has been shattered and the effects of such a grievous act will resonate throughout the victim's life. It is imperative that as a guardian of justice, a clear and unequivocal message has to be sent indicating that such depraved actions can not be tolerated under any circumstances.

16. Considering the facts and circumstances of the case, taking into consideration the age of the victim and gravity of the injury sustained by her and without expressing any opinion on the merits of the case, this Court is not inclined to release the applicant on bail.

17. The bail application is, accordingly, rejected.

18. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously, in view of the principle laid down in the recent judgements of the Supreme Court in the cases of **Vinod Kumar vs. State of Punjab 2015 (3) SCC 220** and **Hussain and Another vs. Union of India (2017) 5 SCC 702**, if there is no legal impediment.

19. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

**Order Date :- 9.9.2024**

Sumit S

**(Justice Krishan Pahal)**