

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24946 of 2024

Applicant :- Saurabh @ Saurabh Kumar

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

Counsel for Applicant :- Jyoti Bhushan

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. As informed by learned A.G.A., notice has been served to the informant on 5.5.2024. The ossification test report is on record.

2. Heard learned counsel for the applicant as well as Sri V.K.S. Parmar, learned A.G.A. for the State and perused the material placed on record.

3. Applicant seeks bail in Case Crime No. 138 of 2024, U/S 376DB, 506 IPC and 5G, 5M/G of The Protection of Children From Sexual Offences Act and 67 of Information Technology Act, Police Station Ahraula, District Azamgarh, during the pendency of trial.

PROSECUTION STORY:

4. The applicant and the co-accused person Sehban are stated to have enticed away the minor daughter of the informant from her school and had raped her by taking her outside and had made viral the indecent video of her on WhatsApp. The video is stated to have been sent by some person, to the mobile of the brother of the informant namely, Saurabh Singh, as such, the FIR was instituted by him on 3.4.2024.

ARGUMENTS ON BEHALF OF THE APPLICANT:

5. The applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. He has nothing to do with the said offence.

6. There is no mentioning of date and time of the offence committed, if any, by the applicant. Only the date of receiving the said video on WhatsApp has been mentioned by the informant.

7. As per the ossification test report, the age of the victim has come up between 16 to 18 years. As per her own statement recorded u/s 164 Cr.P.C., the victim seems to be the consenting party, although she has allayed the allegations of rape against the applicant also.

8. 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.

9. There is no criminal history of the applicant. The applicant is languishing in jail since 3.4.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT/STATE:

10. The applicant and the co-accused person had forcibly gang raped the victim and had blackmailed her and had threatened her to make the said video viral and thereafter, made it viral on social media. The said video has been received by the investigating officer in a pen-drive but he could not indicate any details of the video, if any, perused by him indicating the complicity of the applicant or the co-accused person. The said callous approach of the Investigating Officer is but evident in many cases.

11. The mobile of the applicant has also been recovered by the Investigating Officer but there is nothing on record to suggest that he had seen the gallery of the said mobile to show the complicity of the applicant or not.

CONCLUSION:

12. The Investigating Officer has not bothered to go into the details of the said video recovered. The said act of the Investigating Officer is deprecated.

13. The Investigating Officer is directed to file the personal affidavit indicating the details of the evidence against the applicant regarding the video being made viral by the applicant or the co-accused person and also the contents of the video, as observed by him.

14. This Court has observed every now and then that the Investigating Officers are not vigilant enough in appreciating the evidence regarding the recovery of photographs and videos by

electronic means. They shrug off their responsibilities by taking into possession photographs or videos in pen drive and sent them to the Forensic Science Laboratory for forensic analysis. The said act seems to be just passing of the buck. This act has to stop and the Director General of Police is required to look into the matter and pass corrective orders.

15. The Director General of Police is directed to take care of the matter and instruct all the investigating officers to be vigilant in future in investigating the matters involving information and technology because it is a matter of infringement of fundamental rights of the accused person as well as the victim.

16. List this application on **27.9.2024 as fresh before this Court among top ten cases.**

17. The Registrar Compliance of this Court is directed to communicate the order passed by this Court to the C.J.M. concerned for necessary compliance within 48 hours.

18. Learned A.G.A. is also directed to inform the respective officials for compliance of the said order.

19. The ossification test report be returned to the office of the concerned C.M.O. after retaining the photocopy thereof.

Order Date :- 30.8.2024

Shalini

(Justice Krishan Pahal)