

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42035 of 2024

Applicant :- Gandharv Kumar @ Gaurav

Opposite Party :- State of U.P.

Counsel for Applicant :- Bhupendra Kumar Pandey, Laxmi Yadav, Maruti Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

1-Heard learned counsel for the applicant and learned Additional Government Advocate representing the State and perused the record.

2-By means of this application under Section 439 of Cr.P.C., applicant-Gandharv Kumar @ Gaurav, who is involved in Case Crime No. 3232 of 2018, under Sections 366, 376, 328, 342 and 506 I.P.C., Police Station Sahibabad, District Ghaziabad seeks enlargement on bail.

3-As per prosecution case in brief, informant who is father of the victim has lodged an F.I.R. on 26.10.2018 against the applicant for the offence under Section 366 I.P.C. alleging inter-alia that his daughter used to take tuition from the applicant. On 25.10.2018 at about 12:00 in the noon, his daughter went for tuition class but did not return. F.I.R. also alleges that the applicant was also missing from that day and he has apprehension that the applicant has enticed away his daughter.

4-The main substratum of argument of learned counsel for the applicant is that the applicant is innocent and has been falsely implicated in this case. Both the victim and applicant were major and indulged in a consensual relationship. It is also submitted that both of them have solemnized marriage and got their marriage registered,

therefore, applicant who has no criminal history to his credit and is languishing in jail since 24.08.2024 is entitled to be released on bail.

5-Per contra, learned A.G.A. for the State opposed the prayer for bail of the applicant by reiterating the prosecution case. Much emphasis has been given on the statements under Section 161 and 164 Cr.P.C. of the victim, where the victim has described the act of the applicant. It is next submitted that there is no contradictions in the statements under Section 161 and 164 Cr.P.C. of the victim. The statement of the victim recorded under Section 164 Cr.P.C. reads as under :-

..... मैं गुरु कोचिंग सेंटर गरिमा गार्डन में गंधर्व कुमार से ट्यूशन पढ़ती थी। मेरी रोज तो 3 बजे की क्लास होती थी, लेकिन दिनांक 25.10.2018 को उसने मुझे 12 बजे पढ़ने के लिए बुलाया और जब मैं कोचिंग में गई तो और कोई भी बच्चा नहीं था और मेरे पूछने पर उसने कहा की अभी थोड़ी देर में सब बच्चे आ जायेंगे और मैं बैठ गई फिर उसने मुझे कोल्डड्रिंक पीने के लिए कहा तैने मना किया तो उसने बोला गर्मी हो रही है पी लो मैंने कोल्डड्रिंक पी ली और उसे पीते ही मेरे हाथ पैर ढीले हो गए और मैं आधी बेहोश सी हो गई और फिर उसने मेरे कपडे उतारकर मेरे साथ बलात्कार किया और फिर मेरी नंगी फोटो ली और इन्टरनेट पर डालने की धमकी देकर मुझे एक वकील के आफिस में ले गया और वहां मुझसे कागजों पर साईन करवाए और फिर वहां से मुझे दिल्ली के एक होटल में ले गया वहां भी मेरा बलात्कार किया अगले दिन वो मुझे होटल से रोहिणी सेक्टर 34 पोकट 4 में ले गया फिर वहां उसने बलात्कार किया। फिर दिनांक 30.10.2018 को मुझे बिहार ले के जाने वाला था लेकिन पहले वो मुझे गाजियाबाद कोर्ट ले गया और वहां उसने मुझसे कुछ पेपर पर साईन करवाए। मुझे यह नहीं पता कि उसने मुझसे किन कागजों पर साईन करवाए।

6-Having heard learned counsel for the parties and examined the matter in its entirety, I find that the victim in her statements under Section 161 and 164 Cr.P.C. has made specific allegation against the applicant for committing rape upon her. This Court

also finds that there is no contradiction in the statements under Section 161 and 164 Cr.P.C. of the victim, hence, no ground for false implication of the applicant is made out.

7-In a democratic society, the role of a teacher is multifaceted and carries significant responsibilities that extend beyond the mere imparting of knowledge. Teachers play a crucial role in shaping the future citizens of a democratic nation, influencing not only their academic development but also moulding their civil consciousness and ethical values. The impact of a teacher's responsibilities extends beyond the classroom, influencing the broader fabric of society and contributing to the sustainability and vitality of democracy itself. But in the instant case I find that instead of discharging his pivotal role in imparting education and knowledge to the student, he became tormentor and victim fall prey to the lust of the applicant.

8-The sexual violence is dehumanizing and unlawful intrusion to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The crime of rape has a negative impact on the victim as it disrupts her mental condition. It is often stated that a woman who is raped undergoes two crises- the rape and the subsequent trial. While the first seriously wounds her dignity, curbs her individual, destroys her sense of security and may often ruin her physically, the second is no less potent of mischief inasmuch as it not only force her to re-live through the traumatic experience, but also does so in the glare of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her.

9-Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant, statement of the victim and severity of punishment, I do not find any good ground to release the applicant on bail.

10-Accordingly, the bail application is ***rejected***.

11-It is made clear that the observation contained in the instant order is confined to the issue of bail and shall not affect the merit of the trial.

Order Date :- 8.1.2025

Saurabh