

Deepak Kumar vs State Of U.P. And 3 Others on 1 April, 2025

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44774

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42524 of 2024

Applicant :- Deepak Kumar

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Shashank Tripathi

Counsel for Opposite Party :- G.A.,Shivam Tiwari

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Shashank Tripathi, learned counsel for the applicant, Sri Shivam Tiwari, learned counsel for the first informant, Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Deepak Kumar, seeking enlargement on bail during trial in connection with Case Crime No.31 of 2023, u/s 376, 506 IPC and Section 3/4 POCSO Act, registered at Police Station Kalyanpur,

District Kanpur Nagar.

4. This is a second bail application. The first bail application of the applicant was rejected vide order dated 28.10.2023 passed by this Court passed in Criminal Misc. Bail Application No.45338 of 2023.

5. Learned counsel for the applicant submits that he does not intend to file response to the counter affidavit of the first informant. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that since the victim has in the FIR stated that she has lodged the FIR after she came to know that the applicant has married to some other girl on 25.11.2022 and previously on a pretext to marry her and after getting employment there was physical relationship between them would not amount to rape but the initiation of the present case would be an act of revenge. It is argued that the victim was examined as P.W.1 before the trial court who in great detail was cross-examined and there are contradictions in her statement and she states that her maternal grandmother (nani) got her age entered in the school records which was incorrect. It is argued that the victim had lodged the FIR at a point of time when she was mentally not in a fit condition and looking to the same the implication of the applicant in the present case is false. It has also been pointed out that the applicant is not having any criminal history as stated in para 31 of the affidavit and is in jail since 25.8.2023.

6. Per contra learned counsel for the first informant and learned counsel for the State vehemently opposed the prayer for bail and argued that the first bail application of the applicant was rejected by this Court on merits. The victim was minor at the time of incident. It is argued that the present case is a case of rape in which trial has started and the testimony of witnesses are being recorded. It is argued that the victim while being examined as P.W.1 before the trial court has supported the prosecution case and since the victim has supported the prosecution case before the trial court also the appreciation of her evidence is for the trial court to do at the appropriate stage, as such bail application of the applicant be rejected.

7. After hearing the counsel for the parties and perusing the record, it is evident that the first bail application of the applicant was rejected by this Court vide order dated 28.10.2023, the said order reads as under:-

"1. List revised.

2. Sri Dewarshi Kumar Rai, Advocate states that he has filed his vakalatnama in the office on behalf of the first informant on 26.10.2023 but the same is not on record.

3. Office is directed to trace out the same and place it on record.

4. Heard Sri Ashok Kumar Mishra, learned counsel for the applicant, Sri Dewarshi Kumar Rai, learned counsel for the first informant, Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.

5. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Deepak Kumar, seeking enlargement on bail during trial in connection with Case Crime No.31 of 2023, under Sections 376, 506 IPC and 3/4 POCSO Act, registered at Police Station Kalyanpur, District Kanpur Nagar.

6. The FIR of the matter was lodged on 27.1.2023 by the victim herself against the applicant alleging therein that he had allured her on promise to marry after getting employment and committed rape upon her since the year 2017. In the year 2018, he got employment in the police department after which he was asked by her to marry to which he started avoiding it. She has come to know that the applicant has married to some other girl on 25.11.2022. The FIR be thus lodged.

7. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the FIR was lodged under Sections 376, 506 IPC and 3/4 POCSO Act in spite of the fact that the victim had disclosed her age to be 21 years therein. While placing para no.13 of the affidavit, it is argued that as a matter of fact Nisha Devi and the victim were friends and are relatives studying in the same class. Nisha Devi was having friendship with the applicant before her marriage and she has married with the applicant and when the victim got annoyed of the marriage with Nisha Devi, she has lodged present FIR. It is argued that the applicant during the period of investigation challenged the FIR along with prayer for staying of arrest before this Court in Criminal Misc. Writ Petition No.2402 of 2023 (Deepak Kumar Vs. State of U.P. and 2 others) in which Division Bench of this Court vide order dated 13.02.2023 directed that the applicant shall not be arrested till the next date of listing or till submission of police report under Section 173(2) Cr.P.C., copy of the same is annexed as Annexure No.6 to the affidavit filed in support of bail application. It is argued that the victim as per her High School Certificate is having her date of birth 15.09.2001 and as such she is aged about 21 years and a major. It has also been pointed out that the applicant is not having any criminal history as stated in para 18 of the affidavit and is in jail since 25.8.2023.

8. Per contra learned counsel for the first informant and learned counsel for the State vehemently opposed the prayer for bail and argued that the victim at the time of incident i.e. in the year 2017 was aged about 16 years and was a minor. It is argued that the applicant is named in the FIR, in the statement of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C and role has been assigned to him. The applicant had assaulted the victim and her family members regarding which a FIR was lodged as Case Crime No.388 of 2023 under Sections 147, 323, 506 IPC, Police Station Kalyanpur, District Kanpur Nagar by the victim herself. The applicant had challenged the proceedings of the present case after submission of charge sheet and cognizance but the said petition was dismissed vide order dated 10.8.2023 passed in Application U/S 482 No.29317 of 2023 (Deepak Kumar Vs. State of U.P. and another) passed by coordinate Bench of this Court, copy of the said order has been produced by learned counsel for the applicant, the same is taken on record.

9. After hearing the counsel for the parties and perusing the record, it is evident that the victim at the time of incident was a minor girl. The applicant is named in the FIR, in the statement of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C and role has been assigned to him. The applicant is employed in the police department as such there are good chances of his tempering with the evidence.

10. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected. "

8. The present bail application is a second bail application. The argument that the FIR was lodged as a revenge by the victim/first informant does not appear to be having any substance inasmuch as there is simplicitor allegation of rape committed on a minor girl. The victim has supported the prosecution case before the trial court. The trial court shall be in its right to appreciate the statements of the witnesses recorded before it at the appropriate stage. There is no fresh and new ground argued.

9. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected.

(Samit Gopal, J.) Order Date :- 1.4.2025 Gaurav Kuls