

Court No. - 39

Case :- CRIMINAL APPEAL No. - 4578 of 2019

Appellant :- Charan Singh

Respondent :- State of U.P.

Counsel for Appellant :- Santosh Kumar Singh, Vinay Kumar Tripathi

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Vikram D. Chauhan, J.

In re: Criminal Misc. IInd Bail Application No. 16 of 2024.

1. Heard Sri Vinay Kumar Tripathi, learned counsel for the applicant-appellant and Shri L.D. Rajbhar, learned A.G.A. for the State.
2. This is the second bail application. The first bail application was rejected for non prosecution *vide* order dated 23.02.2022.
3. The applicant-Charan Singh has filed this second bail application with a prayer to enlarge him on bail in Session Trial No. 17 of 2016 (State Vs. Charan Singh), arising out of Case Crime No. 87 of 2016, under Section 376 I.P.C. read with Section 4 of P.O.C.S.O. Act, Police Station- Gajraula, District- Amroha.
4. As on 26.08.2024, the appellant is disclosed to have remained confined for 8 years 6 months and 8 days. Together with remission it may be taken at 10 years 1 month and 23 days.
5. Submission of learned counsel for the appellant is, the medical opinion clearly disputes the prosecution story. The hymen of the girl was found intact. No external injury was found on the body of the victim. Referring to her alleged statement made before the doctor, it has been urged that the victim only proved the allegation of molestation. The real dispute between the parties is described to be a boundary dispute only. In such circumstances, it has been

strenuously urged that the appellant has remained confined for more than 10 years. There is no hope of early hearing of the appeal. Therefore, the appellant may be enlarged on bail, at this stage.

6. On the other hand, learned A.G.A. would submit that the offence found proven is heinous. The victim girl was barely 12 years of age whereas the appellant was about 44 years of age on the date of occurrence. Referring to the injury report, it has been submitted that the oral evidence is wholly consistent to the medical evidence inasmuch as two injuries caused by hard and blunt object were noted in the genital area of the minor girl. Both were lacerated wounds. In the context of the occurrence alleged to have taken place on 17.02.2016, the F.I.R. was promptly lodged on the same day and the medical examination was also conducted on that day itself. P.W.7 Dr. Arushi Chaturvedi in her cross-examination clearly testified that the injuries were present and they were fresh. Referring to the offence classification, it has been submitted, the occurrence was clearly proven. In the context of the fact that the victim was merely 12 years of age and the accused-appellant was more than 44 years of age, the applicant merits no discretion at this stage as his release may be detrimental to the interest of the society.

7. Having heard learned counsel for the parties and having perused the material brought on record, at present, there is nothing to doubt the prosecution story as has been found proven by the learned trial court. The oral evidence led by the prosecution was complete and convincing. Stress placed on stray statements appearing in the cross examination statement of the victim, may be of no relevance to the defence, at this stage. Similarly the statement made before the doctor may not have been confronted to the victim. However,

these observations are tentative and may not influence the merits of the appeal. At the same time, heinous offenders may not be dealt with in a routine way by looking at the period of sentence undergone. Premature release of such persons may cause undue risk to the unsuspecting members of the society who remain inherently vulnerable to predatory attacks. In the present case where a fully mature adult is found to have committed such a heinous offence on a minor victim - who is neither physically equipped to resist such predatory attack nor mentally or psychologically strong to deal with the life and personality crippling ill effects of the same, the Courts may remain vigilant and slow to act on liberty consideration and not grant bail on general notions governing grant of bail, without balancing the likely effect of such bails on the unsuspecting and vulnerable members of the society.

8. In view of the entirety of the facts and circumstances brought before us, we sustain the objection raised by the State in the facts of this case - that the premature release of the appellant at this stage is neither advisable nor earned.

9. Accordingly, the bail application stands rejected.

Order on Appeal.

10. Paper books have already been prepared.

11. List the appeal for final hearing in the month of February, 2025 before the appropriate bench.

Order Date :- 27.9.2024

SA

(Vikram D. Chauhan, J.) (S.D. Singh, J.)