

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.1817 of 2019

AmitApplicant

Vs.

State of UttarakhandRespondent

Present :

Mr. Vinod Sharma, learned counsel for the applicant.

Mrs. Manisha Rana Singh, learned A.G.A. for the State of Uttarakhand.

Hon'ble Alok Kumar Verma, J.

This First Bail Application has been filed for grant of regular bail in connection with FIR No.386 of 2018, registered with Police Station Kankhal, District Haridwar, for the offences punishable under Section 376(2)(i)(n) of the I.P.C. and Section 5(1)/6 of the Protection of Children from Sexual Offences (POCSO) Act,2012.

2. In short, an FIR was lodged by the father of the victim on 26.09.2018 with the allegations that the daughter of the informant told the informant about the mental and physical harassment given by the applicant/accused since 2014. The victim informed the informant that the applicant took few photographs for which he was blackmailing and harassing her. She further stated that the applicant abused her on phone and forcing her to make physical relation with him.

3. Heard Mr. Vinod Sharma, learned counsel for the applicant and Mrs. Manisha Rana Singh, learned A.G.A. for the State of Uttarakhand.

4. The learned counsel for the applicant submits that the applicant is an innocent person; no date or month of the physical relations had been mentioned in the FIR; according to the medical report dated 27.09.2018, no sexual

intercourse had been committed with the victim in last few days; no said photographs are produced by the prosecution; no rape or sexual intercourse had ever been committed by the applicant on the prosecutrix; in medical report dated 27.09.2018, no sign of rape had been found and there was no swelling, no injury, no bleeding; the applicant has no criminal history; he is in custody since 27.09.2018; prosecution has not filed so far any reliable certificate of date of birth of the victim.

5. The learned counsel appearing for the State submits that after investigation, the charge sheet has been filed; the evidences of the prosecution's witnesses are going on; the offences are grievous in nature; there is presumption of culpable mental state. However, the learned State counsel fairly concedes that the applicant has no criminal history.

6. The applicant is facing trial. The case of the respondent is that the applicant was torturing the victim since 2014 by showing the obscene photographs, however, no said photographs have been produced by the respondent.

7. The object of keeping an accused person in detention during the trial is not punishment. The main purpose is manifestly to secure the attendance of the applicant/accused. The applicant is the resident of District Haridwar. He has no criminal history; the applicant is in custody since 27.09.2018.

8. The bail is the rule and committal to jail is an exception. Refusal of the bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. In the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694**, the Hon'ble Apex Court has observed that the personal liberty is

very precious fundamental right and it should be curtailed only when it becomes imperative according to the facts and circumstances of the case.

9. In the facts and circumstances of this case, there is no reason to keep the applicant behind the bars for an indefinite period.

10. Having considered the submissions of learned counsel for both the parties and in the light of facts and circumstances of the case, without expressing any opinion as to the merits of the case, which may otherwise affect outcome of the trial, this Court is of the view that the applicant deserves bail at this stage.

11. The bail application is allowed.

12. Let the applicant be released on bail on his executing a personal bond and furnishing two reliable sureties, each in the like amount, to the satisfaction of the court concerned with following conditions:

- (i) The applicant shall attend the trial court regularly.
- (ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
- (iii) The applicant shall not leave India without prior permission of the trial court.

13. It is clarified that if the applicant misuses or violates any of the conditions imposed upon him, the prosecution shall be free to move the court for cancellation of the bail.

(Alok Kumar Verma, J.)

03.03.2020