



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 4270/2023

Rajesh @ Kalyan S/o Sh. Parmesh, Aged About 19 Years,
Malwasa, P.s. Sadar, Dist. Banswara, Raj.
(Presently Lodged In Dist. Jail, Banswara).

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 4271/2023

Anil S/o Maniya @ Manilal Ninama, Aged About 21 Years,
Dhanpura, P.s. Sadar, Dist. Banswara.
(At Present Lodged In Dist. Jail, Banswara).

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s) : Mr. Shambhoo Singh Rathore,
Mr. Ramjan,
Mr. Devendra Sanwlot.

For Respondent(s) : Mr. Shrawan Kumar, P.P.

HON'BLE MR. JUSTICE KULDEEP MATHUR

ORDER

31/05/2023

These two applications for bail under Section 439 Cr.P.C. have been filed by the petitioners who have been arrested in connection with FIR No.286/2022 registered at Police Station Sajjangarh, District Banswara for offences under Sections 323, 341, 327, 394, 365, 376(2)(N), 376-D/34 IPC and 83(2) of Juvenile Justice (Care and Protection of Children) Act.

As per prosecution story, on 23.11.2022, at about 9 pm, when the prosecutrix was going from her father's house, with her fiance- Vijesh on a motorcycle, her fiance went to urinate after putting the bike on side-stand as the prosecutrix stood close to the motorcycle. Suddenly, the petitioners came on a motorcycle and stopped in turn blocking the motorcycle of Vijesh whilst they removed his motorcycle key. The petitioners and co-accused stated beating Vijesh and looted Rs.9800/- from him. One accused thereafter under the threat of knife, made prosecutrix forcibly sit on the motorcycle and took her to the backside of Shani Hanuman Mandir. As per prosecution, petitioner- Anil committed rape upon the prosecutrix, while other co-accused persons surrounded them, facilitating the commission of alleged crime. Petitioner- Anil thereafter took the prosecutrix to her aunt's (*bua*) house, from where she ran away and with great difficulty, informed her sister and other family members about the alleged incident. The prosecutrix was subjected to repeated sexual assaults by petitioner- Anil.

Learned counsel for the petitioners submitted that the petitioners have been falsely implicated in the present case.

It was further submitted on behalf of petitioner- Anil that the story narrated by prosecutrix is highly improbable. Learned counsel submitted that it is unbelievable that the prosecutrix could be forcibly taken away by the accused-petitioners, when she was with her fiance- Vijesh, and further that she was subjected to sexual assault in an open area. Learned counsel submitted that as per prosecutrix, after commission of alleged crime, petitioner- Anil

took the prosecutrix to her aunt's (*bua*) house and gave his mobile number to her.

Learned counsel submitted that it is totally unlikely that an accused after committing crime, will take prosecutrix/victim to his/her relative's house. According to learned counsel, the prosecutrix has falsely roped petitioner- Anil in the present case.

Learned counsel for the petitioner- Rajesh while adopting all the arguments advanced by learned counsel for the petitioner- Anil submitted that specific allegation of committing rape has been levelled against co-accused petitioner- Anil and therefore, he may be enlarged on bail.

It was jointly submitted that challan in the case has already been filed; the petitioners are in judicial custody; and the trial of the case will take sufficiently long time to be concluded, therefore, the petitioners may be enlarged on bail.

Learned Public Prosecutor opposed the bail applications and vehemently submitted that the prosecutrix in her statements under Section 161 and 164 Cr.P.C. has clearly stated that rape upon her was committed by co-accused petitioner- Anil. It has clearly been alleged that other accused persons including petitioner- Rajesh helped him in committing rape by surrounding them.

Learned Public Prosecutor submitted that initially, an FIR was lodged against unidentified persons and therefore, a test identification parade was conducted by the investigating agency, wherein the petitioners have been identified by the prosecutrix.

Learned Public Prosecutor submitted that looking to the seriousness of the offences alleged against the petitioners, they do not deserve concession of bail and present bail applications may be dismissed.

Heard learned counsel for the petitioners and learned Public Prosecutor. Perused the material available on record.

Considering the submissions advanced before this Court, contents of FIR, charge sheet and the documents annexed thereto, this Court *prima facie* finds that at this stage, there is no reason to disbelieve the statements of victim/prosecutrix, particularly when, she has in detail narrated the harrowing incident which occurred on 23.11.2022. This Court also *prima facie* finds that there is specific allegation against petitioner-Rajesh of helping petitioner- Anil in commission of a heinous crime by surrounding him and prosecutrix, while the horrific incident transpired.

Any comment on the merits of the case is bound to affect the defense(s) of the petitioners at the trial, therefore, this Court is refraining from making a detailed discussion on the merits of the case.

Consequently, the present applications for bail are rejected.

However, the petitioners shall be at liberty to a file fresh bail application after recording of the statements of prosecutrix before competent criminal court.

(KULDEEP MATHUR),J

/tarun goyal/