
(2022) 09 UK CK 0023

In the Uttarakhand High Court

Case No : First Bail Application No. 1358 Of 2022

Manoj Sharma & Another

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 323, 363, 366A, 376D
Protection Of Children From Sexual Offences Act, 2012 — Section 5, 6
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2022) 09 UK CK 0023

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : V.B.S. Negi, Amit Kapri, V.K. Gemini, Meena Bisht

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. Applicants-Manoj Sharma and Sunder Singh are in judicial custody in FIR No. 12 of 2022, under Sections 323, 376D, 363, 366A, 120B of IPC and Section 5/6 of the Protection of Children From Sexual Offences Act, 2012, Police Station Jajer dewal, District Pithoragrah. They have sought their release on bail.

2. Heard learned counsel for the parties and perused the record.

3. Victim a girl aged 13 years along with her friend had left her house on 01.03.2022 at 9:00 in the morning. She was spotted with co-accused. She did not return home. Investigation was carried out. Subsequently, the victim revealed that, in fact, on the date of incident co-accused molested and repeatedly raped her.

4. Learned senior counsel appearing for the applicant would submit that there is no evidence against the applicants. In her statements, recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973 ("the Code"), the victim did not name the applicants. It is only after persuasion of the Investigating

Officer ("the IO") that at one stage, the victim told to the IO that when she was molested and raped, the applicants were also present.

5. But, it is argued that the subsequent statement of the victim, in which, she told about presence of the applicants when she was raped, is not reliable because in her statement, recorded under Section 164 of the Code, she has been categorical that the applicants were made to run away from the place of incident and the victim was all alone when the co-accused first raped her and thereafter, she was raped by other co-accused also.

6. Learned State Counsel would submit that, in her statement recorded under Section 161 of the Code, the victim has named the applicants as the persons, who were present, when she was raped and molested. But, learned State Counsel also admits that in her statement recorded under Section 164 of the Code, the victim had said that she was all alone when the co-accused started molesting and raping her.

7. Admittedly, there are no allegations of rape and molestation against the applicants. At one stage, the victim in her statement under Section 161 of the Code has stated that when co-accused Kishore hold her, the applicants were present. But, in her statement under Section 164 of the Code, the victim has stated that she was left all alone, when the co-accused Kishore first molested, raped her and thereafter, co-accused Neeraj did and thereafter, other accused have been named, as the persons who raped her.

8. Having considered the entirety of facts as discussed above, this Court is of the view that it is a case fit for bail. The applicants deserve to be enlarged on bail.

9. The bail application is allowed.

10. Let the applicants be released on bail, on their executing the personal bond and furnishing two reliable sureties, each of the like amount, to the satisfaction of the court concerned.