

(2005) 08 AHC CK 0019

In the Allahabad High Court

Case No : Criminal Misc. Bail Cancellation Application No. 17167 of 2004

Vijay Kumar Upadhayay

APPELLANT

Vs

State of U.P. and Deepak alias Prashant Tomar

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2005) 08 AHC CK 0019

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : J.P. Tripathi and Jahardan Tripathi, for the Appellant; S.S. Rajput and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Ravindra Singh, J.—Heard learned counsel for the applicant and learned AGA.

2. From a perusal of the report of the Chief Judicial Magistrate, Aligarh dated 22.12.2004 it appears that the notice sent by this Court was served upon the opposite party No. 2, Deepak alias Prashant Tomar, even then no counter affidavit has been filed on behalf of opposite party No. 2 and he has not engaged any counsel to defend his case. It is a bail cancellation application.

3. It is contended by learned counsel of the applicant that in this case opposite party No. 2 committed rape with a minor girl aged about 4 years on 13.6.2004 at 12"O clock. The First Information Report was lodged on 17.6.2004 at 7.00 P.M. at Police Station Quarsi, District Aligarh in Case Crime No. 245/2004 u/s 376 I.P.C.

4. From a perusal of the medial examination report the injuries were seen at the private part of body of the prosecutrix. It shows that the rape was committed with her but the bail was granted to opposite party No. 2 Deepak alias Prashant Tomar on the ground that according to the Chief Medical Officer's Report the age of opposite party No. 2 is between 16 to 17 years.

5. It is further contended that opposite party no .2 was not declared juvenile and in respect of such declaration no evidence was recorded in the court in accordance with law. According to the school certificate the age of opposite party No. 2 is 17.8.1985. According to the school certificate he was above 18 years at the time of the alleged offence.
6. It is further contended that without considering the gravity of case and without following proper procedure as prescribed the learned Session Judge has granted bail to the opposite party No. 2.
7. After considering the facts and circumstances of the case and the submissions made by learned counsel for the applicant and considering the facts that even after the sendee of notice opposite party No. 2 has not filed any counter affidavit even he has not engaged his counsel to defend his case and from a perusal of the order dated 11.8.2004 passed by the Sessions Judge, Aligarh in CrI.Misc.Bail Application No. 1858/04 it appears that the opposite party No. 2 was released on bail without considering the merit of the case and gravity of the offence and without following procedure established by law in case of Juvenile therefore the bail granted to opposite party No. 2 by the Sessions Judge, Aligarh on 11.8.2004 is cancelled.
8. The Chief Judicial Magistrate, Aligarh is directed to take steps for arrest of opposite party forthwith.
9. Office is directed to send a copy of this order to the Chief Judicial Magistrate forthwith for the compliance of this order.
10. This bail cancellation application is allowed.