

Dash
Applicant

रवि कपूर
CHHAVI KAPOOR
अतिरिक्त सत्र न्यायाधीश-01 (नैपथी)
Additional Sessions Judge-01 (POCSO)
कमल सरोज-30 नैपथी नई दिल्ली
Room No. 30 NDD, PHC, ND

State vs. Shivam Kumar
FIR No. 389/2021
PS: Naraina

15.04.2024

File taken up today as an application for grant of bail moved on behalf of accused is pending.

Present: Sh. Yadvender Singh, Ld. Addl. PP for State.
Sh. Shailender Kumar, Ld. Counsel for accused.
Ms. Shivani Tyagi, Ld. Counsel from DCW.
Victim is present upon service of Annexure 'A' notice.

Reply to the bail application has been filed.

Victim present in the court today is opposing the bail application of the accused. Her separate statement in this regard has been recorded.

Accused is reported to have been around 18 years and 7 months old at the time of commission of alleged offences by him on a 15 year old girl victim. Accused is in judicial custody since 20.09.2021 on charges of commission of offences u/s 363/366/376 IPC r/w section 6 of POCSO Act. Testimony of the victim has already been recorded. No incriminating evidence appears to have been adduced by the prosecution in the MLC of

the victim to suggest that she had been raped by the accused. Victim did not consent for internal medical examination at the time of preparation of her MLC. Her UPT was found negative.

No external injuries were found on her body. Ld. Counsel for the accused submits that it was clear from the testimony of the victim

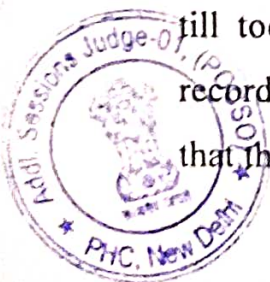
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that she had willingly accompanied the accused to Bhatinda, Punjab. It was argued that on a bare reading of the testimony of the victim, it became clear that she remained in the company of the accused in public places and never once did she object or try to run away from the company of the accused. It was also argued by the counsel for the accused that as per the testimony of the victim, the accused committed rape upon her when both of them were sleeping on the footpath. It was argued that the same was highly unlikely. It was also argued that even though there was no medical evidence to prove commission of offence of rape upon the victim, be that as it may, the conduct of the victim suggested that she was a consenting party to any such physical relationship with the accused. It was argued that false case had been registered by the victim after she arrived back in Delhi in order to obtain compensation by showing her as aggrieved of a serious sexual offence.

It is trite to record that apart from the victim, there is no other public person made as a witness to the investigation by the IO in order to prove that the accused forcibly took the victim out of the company of her guardian and thereafter subjected her to forceful penetrative sexual assault. Prosecution has cited 20 witnesses to the investigation and only one has been examined till today. It is submitted that there is discrepancy in the age record of the victim as well and accused shall prove during trial that the victim was not a minor at the time of commission of

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alleged offences against her. No previous involvement of the accused in any other similar criminal offence is reported. Accused was aged nearly 18 years at the time of registration of the FIR. He has spent considerable amount of time in judicial custody as an under trial. Thus, considering the young age of the accused, the gravity of the situation and the facts and circumstances of the case, this court grants regular court bail to him as his further judicial custody is no longer required in this case. Accused be released on bail on his furnishing a personal bail bond and one surety in the sum of Rs. 15,000/-. Application is accordingly disposed off.

Copy of order be given dasti and be also sent to Jail Superintendent for information of the accused.



TRUE COPY


Reader


(Chhavi Kapoor)

ASJ-01 (POCSO)/NDD

PHC/ND/15.04.2024

अतिरिक्त सत्र न्यायाधीश-01 (पोक्सो)

Additional Sessions Judge-01 (POCSO)

कक्ष संख्या-30 फ़ैमिली न्यू दिल्ली

Room No. 30, NDD, PHC, ND