

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 2611 of 2023

**Applicant :-** Mata Pher Rawat

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Deptt. Civil Sectt. Lko. And 3 Others

**Counsel for Applicant :-** Avinash Kumar Srivastava, Sunil Kumar Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh, J.**

1. This is the second bail application.
2. The first bail application of the applicant was rejected for want of prosecution by Hon'ble Mohd. Faiz Alam Khan, J, in Criminal Misc Bail Application No. 14242 of 2021 vide order dated 05.09.2022.
3. Heard Shri Avinash Kumar Srivastava, learned counsel for the accused-applicant as well as Shri Rajesh Kumar Singh, learned A.G.A.-I for the State assisted by Ms. Divya Verma, Brief Holder for the State and perused the record.
4. This bail application has been filed seeking release of the accused/applicant **Mata Pher Rawat** on bail, who is involved in Case Crime No. 070 of 2020, under Sections 376 I.P.C. and 5/6 POCSO Act, Police Station Haidergarh, District Barabanki.
5. Learned counsel for the applicant has submitted that the First Information Report was lodged by the grandfather of the victim and no one had seen the incident of rape on the victim. It has been submitted by learned counsel for the applicant that the infant child of 2 years while sleeping on the cot had received injury on her private part by iron nail and it is not the case of rape. He has submitted that the medical report indicates that no opinion of sexual assault has been given by the doctor and no definite opinion of rape has been given and also no spermatozoa has been found on the body of the victim, therefore, the prosecution case is not supported by the medical report. Learned counsel for the applicant further submitted that the victim was referred to the KGMU Hospital for surgery of anal part and it indicates that rape was not committed. He further invited attention of the Court towards the statement of P.W.-1, P.W.-2, P.W.-3. P.W.-1 i.e. the mother of victim has stated that on the basis of doubt she lodged the report against the applicant and similar statements have also been given by P.W.-2 and P.W.-3 before the Court. Learned

counsel for the applicant further stated that there is no criminal history against the applicant and he is in jail since 26.02.2020.

6. On the other hand, Shri Rajesh Kumar Singh, learned A.G.A.-I has argued that the grandfather of the deceased had lodged the First Information Report mentioning that his grand daughter aged about 2 years was sleeping alone and the applicant committed rape on her due to which there was bleeding in her private part. Learned A.G.A further submitted that the medical report indicates that hymen of the victim was newly ruptured and torn and there was tear in the vaginal wall along with vaginal bleeding.

7. Learned A.G.A has further drawn attention towards the discharge summary of Department of Pediatric and findings that have been recorded are as follows:

(i) Complete interior rectal wall tear extending into anal orifice

(ii) Tear of Fourchette

(iii) Tear of distal 2/3<sup>rd</sup> of posterior vaginal wall

(iv) Tear of internal and external anal sphincter

8. Learned A.G.A for the State has further drawn attention of the Court towards the statement of P.W.-1 Ram Sanehi who has deposed before the Court that it was 2 O' Clock in the day time, he had taken food and the applicant Mata Pher had gone to other house to take food where his granddaughter was sleeping alone. The applicant did not eat food and he committed rape on her granddaughter. When the victim raised alarm, family members of the victim reached to the place of occurrence and as soon as the family members reached, the applicant ran away from the place of occurrence and P.W.-1 and his family members saw that there was bleeding from the private part of the victim. Learned A.G.A-I has further drawn attention of the Court towards the statement of P.W.-2 i.e. the mother of the deceased and P.W.-3 i.e. the father of the deceased and all the witnesses in their examination-in-chiefs have deposed the same fact and in their cross-examination, they have fortified their statement of fact which was narrated by them in their examination-in-chief.

9. Learned A.G.A for the State has further submitted that it is a heinous crime and an infant of 20 months was brutally raped by the applicant and there is no iota of doubt and no reason as to why the applicant will be implicated falsely in the present case. The applicant had come to the house of the victim who was sleeping alone and rape was committed by him. Since the applicant has committed a heinous offence therefore, he does not deserve mercy of the Court and thus, the bail application of the applicant is

liable to be rejected.

10. Considering overall facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties, it is evident that medical report indicates that private part of the victim was ruptured and vaginal bleeding is found, the summary discharge report also indicates that the victim received serious injuries on her private part that is why she was referred for surgery, the crime appears to be very serious as the infant of about 20 months who was sleeping alone was raped by the applicant and only the minor contradictions in the statements of P.W.1, P.W.-2 and P.W.-3 will not help the applicant, thus, I do not find it to be a fit case for grant of bail.

11. The bail application of the accused/applicant **Mata Pher Rawat** is hereby rejected.

**Order Date :- 11.8.2023**

DiVYa