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**(2007) 09 AHC CK 0168**

**Allahabad High Court**

**Case No:** None

Gajendra

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 27, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164

**Hon'ble Judges:** Ravindra Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Ravindra Singh, J.

This bail application has been filed by the applicant Gajendra with a prayer that he may be released on bail in case crime No. 189 of 2007 u/s 365, 366, 376 IPC, P.S. Fatehabad, District Agra.

2. The facts in brief, of this case are that F.I.R. of this case has been lodged by Ram Nath on 8.5.2007 at 12.30 P.M. in respect of the incident which had occurred on 29.3.2007 at about 7.00 A.M., in which the applicant and three other co-accused namely Mahendra, Ram Das and Radhey Shyam were named as accused. It is alleged that the first informant has gave the information to the P.S. concerned on 6.4.2007 in respect of missing of his daughter Km. Vandana aged about 15 years who was missing since 29.3.2007. During the search it was found that on 9.4.2007 one Radhey Shyam had talked with Keshkali on a telephone, it was also informed that Km. Vandana was seen by Jagannath and Satyaveer when she was "going on a motorcycle in the company of the applicant and co-accused Mahendra followed by the co-accused Ram Das and Radhey Shyam. The allegation against the applicant and other co-accused is that they have enticed away the minor girl Km. Vandana who has been recovered by the police and her statement has been recorded u/s 161 Cr.P.C. on 29.5.2007. According to her medical examination she was found aged about 18 years, no injury was seen on her person, no spermatozoa was found in her

vaginal smear and her statement u/s 164 Cr.P.C. has also been recorded in which she made specific allegation of committing rape against the applicant and other co-accused persons. The applicant was applied for bail before learned Sessions Judge, Agra who rejected the same on 9.7.2007, being aggrieved from the order dated 9.7.2007 the applicant applied for bail before this Court.

3. Heard Sri Satish Trivedi, Senior Advocate assisted by Sri K.K. Dwivedi, learned Counsel for the applicant, learned A.G.A. and Sri A.B.L. Gaur, Senior Advocate, assisted by Dr. Akhilesh Kumar Sharma, learned Counsel for the complainant.

4. It is contended by learned Counsel for the applicant that applicant is not named in the report of missing of the prosecutrix. The F.I.R. is too much delayed, it was lodged after great thought and consultation. There is no plausible explanation of delay in lodging the F.I.R. which shows that prosecutrix was a consenting party. The prosecutrix has been recovered, no injury was seen on her person, no spermatozoa was found on her vaginal smear, she was used to sexual intercourse and she was major girl aged about 18 years. She remained in the company of the applicant for a considerable period with her free will and consent. But after the recovery she gave a coloured version at the persuasion of the first informant and other. After recovery her statement has been recorded u/s 161 Cr.P.C. in which she has clearly stated that she moved one to another place and she was allured for Rs. Two and half lacs and some of land and she was asked to marry with the applicant. She was taken by the applicant to Vaishno Devi where she was kept in a room, from where she was taken to Delhi and Agra, it shows that she was a consenting party. The applicant is innocent, he has not committed any offence and there is no chance of his absconding, he may be released on bail.

5. In reply of the above contention, it is submitted by learned A.G.A. and learned Counsel for the complainant that the prosecutrix was kidnapped by the applicant and other co-accused persons she was appearing in the High School examination, she was called by the applicant from the class room and gave the information that her father has met an accident. She was taken in a four wheeler; and locked in a room where rape was committed by the applicant. She was illegally detained and she was pressurized to marry with the applicant for which the allurements were given, she was also beaten by the applicant and extended the threat to face the dire consequences. She clearly stated u/s 164 Cr.P.C. that she was raped by the applicant and one Jitendra and she was taken to one to another places under coercion. The applicant is aged about 35 years; he is married person and father of three children. Whereas the prosecutrix is minor girl, according to High School certificate her date of birth is 8.8.1992 on the date of alleged incident she was below 15 years. In any case she is not consenting party. In case the applicant is released on bail, he may temper with evidence also.

6. Considering the facts, circumstances of the case, submissions made by learned Counsel for the applicant, learned A.G.A., learned Counsel for the complainant and

from the perusal of the record it appears that there is specific allegation of kidnapping the prosecutrix, the prosecutrix was kept under coercion, the rape has been committed with her, it is a case of gang rape, according to the High school certificate the age of the prosecutrix is below 15 years and the applicant is married person having wife and three children, in any case the prosecutrix can not be a consenting party and without expressing any opinion on the merit of the case, the applicant is not entitled for bail. The prayer for bail is refused.

7. Accordingly this application is rejected.