

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2619 of 2023

Applicant :- Ajay @ Tulsi

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Saurabh Pandey, Prateek Srivastava

Counsel for Opposite Party :- G.A., Rudra Kant Mishra

Hon'ble Ajay Bhanot, J.

Shri Paritosh Kumar Malviya, learned AGA-I for the State contends that the police authorities in compliance of the directions issued by this Court in **Criminal Misc. Bail Application No. 46998 of 2020 (Junaid Vs State of U.P. and another)** reported at **2021 (6) ADJ 511** and with a view to implement the provisions of POCSO Act, 2012 read with POCSO Rules, 2020, have served the bail application upon the victim/legal guardian as well as upon the CWC.

By means of the the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 659 of 2022 at Police Station-Robertsganj, District-Sonbhadra under Sections 363, 366, 376 (3) I.P.C. The applicant is in jail since 15.10.2022.

The bail application of the applicant was rejected by the learned trial court on 14.11.2022.

The following arguments made by Shri Prateek

Srivastava, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. Learned counsel for the applicant contests the minority of the victim as depicted in the prosecution case.

2. The victim was wrongly shown as a minor of 15 years in the F.I.R. only to falsely implicate the applicant under the stringent provisions of the POCSO Act and cause his imprisonment.

3. Learned counsel for the applicant contests the age of the victim set out in the prosecution case in light of the judgement of this Court in **Monish Vs. State of U.P. and others (Criminal Misc. Bail Application No. 55026 of 2021)** and on the following grounds:

(i) There are material contradictions in the age of the victim as recorded in various prosecution documents.

(ii) The age of the victim was incorrectly got registered in the school records by the victim's parents to give her an advantage in life. There is no lawful basis for the age related entry of the victim in the school records. The school records disclosing her age as 15 years are unreliable.

(ii) The victim in her statements under Sections 161 Cr.P.C. and Section 164 Cr.P.C. has stated that she is 15

and 17 years of age respectively.

(iii) Medico-legal examination (not the age determination test) records that the victim is 15 years of age.

(iv) No medical examination to determine the correct age of the victim as per the latest scientific criteria and medical protocol by eminent doctors from a reputed institution was got done by the prosecution as it would establish the majority of the victim and falsify the prosecution case. The victim is in fact a major.

4. The victim and the applicant were intimate.

5. The F.I.R. is the result of opposition of the victim's family to the said relationship with the applicant.

6. The victim in her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. has admitted to intimacy with the applicant. The victim has further asserted that she eloped with the applicant and got married to him of her own volition and they had consensual physical relationship.

7. No allegation of abduction, wrongful detention or commission of rape by the applicant with the victim has been made by the latter in her statements under Section 161 Cr.P.C. and 164 Cr.P.C.

8. The victim was never confined or bound down in any manner. The victim was present at public places. She did not raise an alarm nor did she resist the applicant. Her conduct shows that she was a consenting party.

9. The victim was never confined or bound down in any manner. The victim never raised an alarm nor did she resist the applicant. The conduct of the victim shows that she was a consenting party.

10. Major inconsistencies in the recitals in the F.I.R. and the statements of the victim under Sections 161 Cr.P.C. and Section 164 Cr.P.C. discredit the prosecution case.

11. Medical evidence to corroborate commission of rape by the applicant with the victim has not been produced by the prosecution.

12. Prosecution evidence does not connect the applicant with the offence.

13. The applicant has explained his criminal history. It is also contended that the applicant has become a soft target and a convenient scapegoat for the police authorities who nominated him in a number of false cases to burnish their professional credentials. The said cases do not have any bearing on the instant bail application.

14. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail

application is allowed.

Let the applicant- **Ajay @ Tuls**i be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 16.10.2023

Dhananjai