

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15228 of 2022

Applicant :- Sintu Yadav@ Sachin Yadav

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

Counsel for Applicant :- Dinesh Kumar Verma,V.K. Agnihotri

Counsel for Opposite Party :- G.A.,Pramod Kumar

Hon'ble Ajay Bhanot,J.

Matter is called out. None appears for the applicant to press the bail application. The name of the learned counsel for the applicant is shown in the cause list. Learned A.G.A. for the State is present.

Learned counsel at the Bar has been requested to assist the Court in the matter. This Court in the light of the holding in Maneesh Pathak vs. State of U.P. passed in Criminal Misc. Bail Application No. 18536 of 2020 is not dismissing the case for non prosecution. Learned members at the Bar have volunteered to assist the Court pro bono in the highest tradition of the profession. The Court has appointed learned counsel as amicus curiae.

Shri Paritosh Kumar Malviya, learned AGA-I 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.415 of 2021 at Police Station-Bharthana, District-Etawah under Sections 363, 366, 504, 506, 376 IPC and Section 3/4 of the POCSO Act. The applicant is in jail since 24.01.2022.

The bail application of the applicant was rejected by the learned trial court on 09.02.2022.

The following arguments made by Shri Shamshad Ahmad, learned amicus curiae on behalf of the applicant, which could not be satisfactorily refuted by Shri Sudarshan Singh, learned counsel for the informant and 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 in the F.I.R. as 17 years 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 raises 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 basis of the said entry in the school records. The school records disclosing her age as 17 are unreliable.

(iii) The victim in her statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C. has asserted that she is 17 and 18 years of age respectively.

(iv) The medical report drawn up to determine the age of the victim opines that she is 19 years of age. The victim is in fact a major.

4. The applicant and the victim were intimate.

5. FIR is a result of the opposition of the parents of the victim to the said relationship.

6. The victim in her statement under Section 161 CrPC has stated that she travelled to her friend's place from Etawah to Delhi. The victim in her statement under Section 164 Cr.P.C. has admitted to intimacy with the applicant. She further asserted that she has consensual physical relations with the applicant and that she has got married to him of her own volition. Their marriage is not being accepted by her parents.

7. No allegation of abduction, inappropriate behaviour or commission or rape by the applicant with the victim has

been made by her in the aforesaid statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C.

8. The victim was never confined or bound down in any manner. The victim was present at various public places but never raised an alarm nor did she resist the applicant. The conduct of the victim shows that she was a consenting party.

8. Major inconsistencies in the FIR, the statements under Section 161 and 164 Cr.P.C. discredit the prosecution case.

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

10. The applicant does not have any criminal history apart from this case.

11. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court 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-Sintu Yadav@ Sachin Yadav 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.

The District Legal Services Authority (DLSA), Etawah ensure that appropriate legal aid is made available to the applicant for purposes of submitting sureties and completion of other formalities for being set forth at liberty.

Registry is directed to send a copy of this order to the District Legal Services Authority (DLSA), Etawah for onward communication to the applicant who is in jail, and for assisting the applicant in the manner stated above.

The Court appreciates the assistance rendered by Shri Shamshad Ahmad, Amicus Curiae. High Court Legal Services Authority may kindly make the fee payment to Shri Shamshad Ahmad, Advocate on the approved remuneration who represented the applicant as Amicus Curiae before this Court.

Registry to ensure that the Hindi translation of the order shall be provided to the accused in jail forthwith.

Order Date :- 16.10.2023/Ashish Tripathi