

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36833 of 2023

Applicant :- Jaypal

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

Counsel for Applicant :- Dharm Singh Parmar

Counsel for Opposite Party :- G.A., Mamta Singh

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.

2. The FIR in question was lodged, alleging that on 24.2.2020 the son of the informant was enticed away by the applicant. The child was said to be eight years of age. Subsequently, the statement of the victim was recorded under Section 161 Cr.P.C., wherein he stated that the applicant had done wrong. Subsequently, the victim in his statement recorded under Section 164 Cr.P.C. has changed his earlier version and stated that he was carried out by the applicant in a field, where he slapped by him. The applicant removed his paint and committed unnatural sex with him. The victim improved the version by making allegation of non-penetrated sexual assault as defined under section 7 of the POCSO Act and based upon the same, the trial is continuing. The applicant is having no criminal history in his credit and he is languishing in jail since 4.3.2020.

3. It is argued by learned counsel for the applicant that initially at the time of FIR, allegations with regard to the commission of offence under Section 377 I.P.C. was made out, however, the same was not corroborated by the medical report on record, which did not indicate any injury, visible marks of violence or sexual assault. He further submits that there is huge inconsistency in the statements of the victim recorded under sections 161 and 164 Cr.P.C. In support of his contention, learned counsel for the applicant has drawn the attention of the Court by filing supplementary affidavit, which indicates that five witnesses out of ten have been examined so far and there is no likelihood of the conviction of the applicant in the present case. It is further submitted that the trial is to be done by the Magistrate which should be completed expeditiously, however, the ordersheet

demonstrates that the trial is being prolonged without any fault of the applicant, which resulted in violation of the rights of the applicant enshrined under Article 21 of the Constitution of India. He placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Rabi Prakash vs. State of Odisha decided in Special Leave to Appeal (Crl.) No.4169 of 2023*** as well as the judgment of the Hon'ble Supreme Court in the case of ***Manish Sisodia Vs. Central Bureau of Investigation, Criminal Appeal No.003352 of 2023 arising out of SLP (Criminal) NO.8167 of 2023 decided on 30.10.2023.***

4. Learned A.G.A. vehemently opposed the bail prayer.

5. Considering fact that the detention of the applicant for three years without the trial even commencing, clearly violates the rights of speedy trial enshrined under Article 21 of the Constitution of India, which law was reiterated by the Supreme Court in the case of ***Manish Sisodiya (supra)***. Thus, on the ground of prolong detention without there being any chance of the trial concluding in the near future coupled with the fact that there were huge contradictions in the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and there is nothing on record to demonstrate that the applicant if enlarged on bail, would in any way adversely affect the trial and without expressing any opinion on merit, I am of the view that the applicant is entitled to be released on bail.

6. Accordingly, the bail application is allowed.

7. Let the applicant **Jaipal** be released on bail in Case Crime No. 41 of 2020, under sections 377, 504, 506 I.P.C. and section 6 Protection of Children from Sexual Offence (POCSO) Act, P.S. Kurara, district-Hamirpur on his furnishing personal bonds and two reliable sureties of Rs. 1,00,000/- each to the satisfaction of the court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to

the Court or to any police officer or tamper with the evidence.

Order Date :- 2.11.2023

Faridul