

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37707 of 2023

Applicant :- Sonu Rawat

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

Counsel for Applicant :- Rakesh Singh Yadava

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Rakesh Singh Yadav, learned counsel for applicant and Sri Paritosh Malviya, learned AGA for State.

2. This is second bail application filed by applicant-Sonu Rawat in Case Crime No. 061 of 2022, under Sections 363, 366, 376(3) IPC and 3/4 POCSO Act, Police Station Chhitbadagaon Ballia, District Ballia. First bail application for applicant was rejected vide order dated 08.05.2023 by giving following reasons:

"11. In the present case, statement of the victim remained consistent that she was enticed away by the applicant and was kidnapped and later on she was raped also. Dispute, in regard to age of the victim cannot be considered to the extent that victim is a major girl ignoring educational documents as well as Ossification report of the victim.

12. According to various research papers, on basis of referred position of bones, in ossification test, age of victim could be between 14 to 18 years. (See Criminal Misc.Bail Application No.7795 of 2023, Virendra Kumar Vs. State of U.P. & Ors, decided on 27.4.2023).

13. There is another factor which goes against the applicant that he is prior acquainted with the victim and that till date, her statement has not been recorded before Trial Court, therefore, this bail application is rejected. However, considering that applicant is in jail since 2.5.2022, Trial Court is directed to record statement of victim within a period of 12 weeks from today and thereafter the applicant will have a liberty to file a fresh bail application before Trial Court.

14. Registrar (Compliance) to take steps."

3. This Court passed following order on 02.11.2023:

"1. This is second bail application. First bail application of applicant was rejected on 08.05.2023.

2. Learned counsel for applicant submits that subsequently statement of victim has been recorded and she has not supported case of prosecution even in her examination-in-chief and later on declared hostile.

3. In the circumstances, before going into further merit of the case, let Trial Court submit report with regard to present status of trial which shall include number of proposed witnesses, number of witnesses already examined and likelihood period under which trial may be concluded.

4. List on 23rd November, 2023 at 02.00 PM.

5. Registrar (Compliance) to take steps."

4. In pursuance of above order, Trial Court has submitted report dated 09.11.2023 that out of seven proposed prosecution witnesses three have been examined and trial can be concluded within six months.

5. Learned counsel for applicant has reiterated the above submission. He further submits that since all material witnesses have already been examined and victim has turned hostile, therefore, chances of conviction on the basis of nature of evidence, at this stage, appears to be very low.

6. Learned AGA appearing for State has not denied nature of evidence, however, he submits that since trial is likely to be concluded within six months, therefore, bail may not be granted.

7. In aforesaid subsequent circumstances and that applicant is already in jail for more than one and half years as well as considering above referred nature of evidence, I am of the view that present applicant has made out a case for bail.

8. However, applicant is directed to remain present on each and every date as and when required by Trial Court during trial and in case any application for exemption on vague ground is filed, the same shall be a ground for Trial Court to cancel bail immediately.

9. Let the applicant-**Sonu Rawat** 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 concerned with the following conditions which are being imposed in the interest of justice:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if applicant fails to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(iv) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of six months after release of applicant, if there is no other legal impediment.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is allowed.

12. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

Order Date :- 23.11.2023

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