

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37968 of 2023

Applicant :- Ankit

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

Counsel for Applicant :- Amit Daga, Vikrant Singh Parihar

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot, J.

This is the second bail application.

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 this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 281 of 2021 at Police Station Binauli District Baghpat under Section 342, 323, 504, 376D, 506 I.P.C. and Section 3/4 of POCSO Act. The applicant is in jail since 27.08.2021.

The first bail application of the applicant was rejected by the learned trial court on 18.08.2022.

Shri Amit Daga, learned counsel assisted by Shri Shrawan Kumar Yadav, learned counsel on behalf of the applicant submits that due to lack of effective pairkar some important facts could not be made as regards the age of the victim in the first bail application. The said relevant facts have now been disclosed. He prays for and is granted leave for raising the issue of age of the victim in the instant bail application.

The following arguments made by Shri Amit Daga, learned counsel assisted by Shri Shrawan Kumar Yadav, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar Malviya, learned AGA 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 17 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 victim in her statement under Section 161 Cr.P.C. and 164 Cr.P.C. has stated that she is 17 years of age respectively.
- (iii) Medico-legal examination (not the age determination test) records that the victim is about 14 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 applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial.

5. The trial is moving at a snail's pace and is not likely to conclude anytime in the near future. The applicant is not responsible for the delay in the trial.

6. The applicant never influenced witnesses and tampered with the evidence.

7. Inordinate delay in concluding trial had led to virtually an indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to speedy trial.

8. The status report sent by the learned trial court records that the prosecution proposes to examine 7 witnesses to bring home the charges. Till date the second prosecution witness has not been fully examined.

9. The said report also discloses that P.W. 2 and P.W. 3 are not cooperating in the trial proceedings. They have not been responding to the summons nor have appeared in pursuance of the bailable warrant.

10. The prosecution witnesses are deliberately delaying the conduct of the trial only to prolong the incarceration of the applicant.

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 her 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- **Ankit** 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 :- 30.10.2023

Dhananjai