

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39404 of 2023

Applicant :- Nandkishor

Opposite Party :- State of U.P.

Counsel for Applicant :- Anchal Kumar Rao, Amit Daga

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamschery, J.

1. Heard Sri Amit Daga, learned counsel for applicant.

2. This Court has passed following order on 03.10.2023 :-

“1. This is second bail application. The first bail application was rejected by a reasoned order dated 01.05.2023.

2. This Court has passed following order on 11.09.2023 :-

“It is very unfortunate that U.P. Bar Council and High Court Bar Association, Allahabad has again given a call for abstention from judicial work, therefore, none present on behalf of applicant.

This is the second bail application.

First bail application was rejected on 1.5.2023 by a reasoned order.

Examination-in-Chief of the victim was recorded on 15.4.2023 wherein she has supported the case of prosecution, however, in her examination-in-chief which took place on 13.7.2023 i.e. after three months, she has resiled from her statement.

Trial Court shall submit a report as to why there was a huge gap in recording Examination-in-Chief of the victim as well as why the judgement passed by Supreme Court in the case of Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220 has been violated.

List on 3.10.2023 along with report at 2.P.M.

Registrar (Compliance) to take steps.”

3. In pursuance of above order, a report dated 21.09.2023 has been submitted by trial Court and reasons given therein for delayed cross examination of victim are that ?

on 15.06.2023 and 26.06.2023, statement of victim recorded under Section 164 Cr.P.C. was not available?.

4. The Court is not satisfied with the report.

5. Trial Court in a very cursory manner has adjourned the case which appears to be against very concept of fair trial which has been recently clarified by Supreme Court in the case of Munna Pandey vs. State of Bihar, 2023 SCC OnLine SC 1103.

6. Superintendent of Police, Jhansi is directed to submit a personal affidavit as well as trial Court is also directed to submit a detailed report. In default, this Court may take an adverse view.

7. List on 17.10.2023 at 2.00 PM.

8. Registrar (Compliance) to take steps.”

3. In pursuance of above order, a detailed report has been submitted by concerned trial Court affording an explanation as to why there was a delay in recording statements.

4. I am not satisfied with explanation given by concerned trial Court. There is no reason that only on the ground that clerk was on vacation, the Court was handicapped to even take up or pursue statement of victim recorded under Section 164 Cr.P.C.

5. The concerned trial Court has also not noted the directions passed by the Supreme Court in **Munna Pandey vs. State of Bihar, 2023 SCC Online SC 1103**. This Court has also directed to Superintendent of Police, Jhansi to submit a personal affidavit and the same is placed on record.

6. As referred above, in cross-examination, victim has not supported the case of prosecution and has resiled from her statement given in examination-in-chief.

7. In aforesaid circumstances and taking note of nature of evidence, at this stage, there is no sufficient ground to keep the applicant behind the bars, therefore, this Court finds that applicant is liable to be released on bail.

8. Let the applicant- **Nandkishor** be released on bail in the Case Crime No. 188 of 2022 (S.T. No. 721 of 2022) under Section 376 I.P.C., Police Station- Raksa, District- Jhansi 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 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.

(ii) 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.

(iii) 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.

9. 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.

10. The bail application is **allowed**.

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

12. Trial Court is directed that while passing judgment, it will take note of judgments passed by Supreme Court in **Hemudan Nanbha Gadhvi vs. State of Gujarat, (2019) 17 SCC 523** and **Mahila Vinod Kumar vs. State of Madhya Pradesh, (2008) 8 SCC 34**.

13. A copy of this order be placed before Administrative Judge, Jhansi forthwith.

14. Registrar (Compliance) to take steps.

Order Date :- 17.10.2023

Nirmal Sinha