

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41000 of 2023

Applicant :- Mohd. Saleem

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

Counsel for Applicant :- Pankaj Bharti

Counsel for Opposite Party :- G.A.,Sushil Kumar Pandey

Hon'ble Ajay Bhanot,J.

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 the bail application the applicant has prayed to be enlarged on bail in Case Crime No.416 of 2023 at Police Station-Kotwali, District-Muzaffar Nagar under Sections 452, 342, 376(AB), 506 IPC and Section 5(m)/6 of the POCSO Act. The applicant is in jail since 25.07.2023.

The bail application of the applicant was rejected by the learned trial court on 21.08.2023.

The following arguments made by Shri Pankaj Bharti, learned counsel on behalf of the applicant, which could

not be satisfactorily refuted by Shri Sushil Kumar Pandey, learned counsel for the informant and Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. The delay in lodgement of the F.I.R. in the facts and circumstances of the case is fatal to the prosecution case.
2. The applicant has been nominated on account of a petty dispute between the respective families.
3. The medical evidence does not depict any injury on the person of the victim and contradicts the prosecution story.
4. Tutored statements were made by the victim at the behest of her parents only to implicate the applicant and to save the failing prosecution case. The statements are not worthy of belief.
5. The applicant has explained his criminal history. It is contended that the applicant is a convenient scapegoat for the police authorities who have falsely nominated him in another case only to show the proficiency of the police investigators. The said case has no bearing on the instant bail application.
6. 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-Mohd. Saleem 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 :- 17.10.2023

Ashish Tripathi