

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41734 of 2023

Applicant :- Nitish Rajbhar

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

Counsel for Applicant :- Raghawendra Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma,J.

1. Since this case relates to POCSO Act, on 06.10.2023 an order was passed to issue notice to the informant, opposite party no.4 fixing 30.10.2023. On 28.10.2023 the office has reported that in compliance of the order dated 06.10.2023, notice has been issued on 13.10.2023 to CJM, Ballia though the report is awaited. When the case was taken up on 30.10.2023, no served or unserved notice was on record, therefore, the case was adjourned and fixed for 08.11.2023 for disposal. On 07.11.2023, the office had again reported that in compliance of this Court's orders dated 06.10.2023 and 30.10.2023, the report is still awaited. When on two continuous dates no report was submitted by the CJM, Ballia, an order was passed on 08.11.2023 observing that "it appears that the CJM, Ballia is defying and ignoring the order of this Court" and a show cause notice was issued to CJM, Ballia through District Judge, Ballia and a copy of the order dated 08.11.2023 was also sent to the learned Administrative Judge, Ballia for information. Though no report has been submitted by the CJM, Ballia but from perusal of the office note it transpires that virtually the office had not sent the notice to CJM, Ballia for service. Thus, there was mistake on the part of the concerned section of this Court. The matter was considered by the learned Administrative Judge, Ballia

and order was kept on record.

2. From perusal of the apology sought by the concerned section, it is very much clear that CJM, Ballia is not at fault. Since the notice was not received by the CJM, Ballia, she was unable to comply with the order of this Court. CJM, Ballia has also sent a letter dated 09.11.2023 with the averment that no notice issued by the High Court on 06.10.2023 was received to the office of CJM, Ballia. It was only received on 09.11.2023 which was also served upon the informant.

3. Considering the above facts and circumstances, this Court is of the view that since there was no fault on the part of CJM, Ballia, therefore, no step is required to be taken against the CJM, Ballia in the light of paragraphs-4, 5 and 6 of the order dated 08.11.2023. A fresh information be sent to the learned Administrative Judge, Ballia that CJM, Ballia is not at fault as no notice was sent by office of the High Court to CJM, Ballia on the alleged date. A copy of this order be also sent to the District Judge, Ballia and CJM, Ballia. However, in view of the apology sought by the officials of the concerned section of this Court, no action is initiated against them but it is directed that no such fault would happen in future by them.

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

5. By means of this bail application, applicant seeks bail in Case Crime No.25 of 2023, under Sections 363, 366 IPC and Section 16/17 POCSO Act, Police Station Pakadi, District Ballia, during the pendency of trial.

6. It is submitted by learned counsel for the applicant that the

applicant has been falsely implicated in the present case. It is further contended that the victim has not supported the prosecution version either in her statement recorded under Section 161 CrPC or under Section 164 CrPC and she has stated that she voluntarily went to Delhi and thereafter went to Yamuna Nagar, Haryana alongwith the applicant on her own free will; she has solemnized marriage with the applicant at Vrindavan. He further argued that the victim has denied her internal or external medical examination. She has not made any alarm while she visited several public places. It is also argued that except the fact that as per educational certificate the victim was below the age of 18 years, no any other incriminating material is available against the applicant. The victim has also stated that neither she was enticed or allured nor was she pressurized by the accused to leave her guardianship. There is no criminal history against the applicant. There is no likelihood of his abscondence or tampering with the evidence. The applicant is languishing in jail since 07.07.2023. In case the applicant is released on bail, he will not misuse the said liberty.

7. The prayer for bail has been vehemently opposed by learned AGA. However, the aforesaid factual aspects could not be disputed by the learned AGA.

8. Considering the facts, circumstances and the submissions made but without commenting on the merits of the case, this Court is of opinion that the applicant has made out a case for grant of bail on the ground of parity. Accordingly, the bail application is allowed.

9. Let the applicant - **Nitish Rajbhar**, involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 17.11.2023
Shahroz