

Court No. - 37

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41852 of 2023

Applicant :- Ajay

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

Counsel for Applicant :- Sandeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

Shri Rishi Chaddha, learned AGA 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.402 of 2023 at Police Station-Khair, District-Aligarh under Sections 376(D), 506, 120-B, 34 IPC and Section 5/6 POCSO Act. The applicant is in jail since 11.07.2023.

The bail application of the applicant was rejected by the learned trial court on 18.08.2023.

The following arguments made by Shri Sandeep Kumar, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Rajeshwari Prasad Mishra, learned counsel on behalf of the informant and

Shri Rishi Chaddha, 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 in the F.I.R. as 16 years 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 raises the following grounds:
 - (i) There are material contradictions in the age of the victim as recorded in various prosecution documents.
 - (ii). The age of the victim was incorrectly got registered in the school records by the victim's parents to give her an advantage in life. There is no basis of the said entry in the school records. The school records disclosing her age as 16 years, 11 months, 28 days are unreliable.
 - (iii) The victim in her statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C. has asserted that she is 17 years and 16 years of age respectively.
 - (iv) Medico-legal examination (not the age determination test) records that the victim is 16 years of age.

(v). The medical report drawn up to determine the age of the victim opines that she is between 18 years of age. In fact the victim is a major.

4. The delay in lodgment of the F.I.R. in the facts and circumstances of the case is fatal to the prosecution case.

5. The applicant and the victim were intimate.

6. The FIR is a result of the said relationship going awry.

7. The applicant never gave a plighted word to marry the victim.

8. The applicant did not capture any indecent videos of the victim nor did he store or circulate them. No indecent videos of the victim have been recovered from the applicant.

9. The victim had gone to Palwal to meet her love interest.

10. The police authorities at Palwal had investigated the disappearance of the victim and had concluded on basis of evidence collected during investigation that she had left her house of her own volition and was not raped.

11. The F.I.R. was got lodged only to deflect attention from her conduct and implicate the applicant.

12. Major inconsistencies in the F.I.R., statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C. discredit the prosecution case.

13. Medical evidence to corroborate commission of rape

by the applicant with the victim has not been produced.

14. The applicant does not have any criminal history apart from this case.

15. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial 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-**Ajay** 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 :- 21.11.2023

A Gautam