

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42291 of 2023

Applicant :- Sonu Harijan

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

Counsel for Applicant :- Syed Mohammad Abbas Abdy,Om Prakash

Counsel for Opposite Party :- G.A.,Shamshad Ahmad

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 the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 63 of 2023 at Police Station-Kotwali Shahar District-Mirzapur under Sections 363, 366, 376 I.P.C. and Section 3/4 of POCSO Act. The applicant is in jail since 28.06.2023.

The bail application of the applicant was rejected by the learned trial court on 15.07.2023 and 17.08.2023.

The following arguments made by Shri Syed Mohammad Abbas Abdy, learned counsel assisted by Shri Om Prakash, learned on behalf of the applicant, which could not be satisfactorily refuted by Shri Shamshad Ahmad, learned counsel for the opposite party and 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 16 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 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 lawful basis for the age related entry of the victim in the school records. The school records disclosing her age as 16 years are

unreliable.

(iii) The victim in her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. has stated that she is 16 years of age respectively.

(iv) The medical report drawn up to determine the age of the victim opines that she is about 17 to 18 years of age. The victim is in fact a major.

4. The victim and the applicant were intimate.

5. The F.I.R. is the result of opposition of the victim's family to the said relationship with the applicant.

6. The victim in her statement under Section 161 Cr.P.C. has admitted to intimacy with the applicant. The victim has further asserted that she eloped with the applicant and got married to him of her own volition. They had consensual physical relationship.

7. No allegation of abduction, wrongful detention or commission of rape by the applicant with the victim has been made by the latter in her statements under Section 161 Cr.P.C. and 164 Cr.P.C.

8. The victim was never confined or bound down in any manner. The victim was present at public places. She did not raise an alarm nor did she resist the applicant. Her conduct shows that she was a consenting party.

9. Subsequently, false and aggravated allegations have

been made by the victim against the applicant in her statement under Section 164 Cr.P.C. at the behest of her family members only to save the failing prosecution case and to deflect attention from her own conduct.

10. Major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and Section 164 Cr.P.C., as well as the recitals in the F.I.R. discredit the prosecution case.

11. Medical evidence to corroborate commission of rape by the applicant with the victim has not been produced by the prosecution.

12. Prosecution evidence does not connect the applicant with the offence.

13. The applicant does not have any criminal history apart from the instant case.

14. 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- **Sonu Harijan** 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 :- 18.10.2023

Dhananjai