

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43269 of 2023

Applicant :- Mayank

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

Counsel for Applicant :- Shweta Singh, Rakesh Kumar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot, J.

Ms. Sujata Chaudhary, 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. 457 of 2023 at Police Station- Qwarsi, District- Aligarh under Sections 363, 376D IPC and Section 5/6 of the POCSO Act. The applicant is in jail since 09.06.2023.

The bail application of the applicant was rejected by the learned trial court on 26.09.2023.

The following arguments made by Shri Rakesh Kumar Maurya, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Chandan Agarwal, 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 17 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. The school records disclosing her age as 16 years and 6 months are unreliable.

(iii) No medical examination to determine the correct age of the victim as per the latest scientific criteria and medical protocol by eminent doctors from a reputed institution was got done by the prosecution as the same would have established the majority of the victim and falsified the prosecution case. 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.
6. The victim in her statement under Sections 161 Cr.P.C. and 164 Cr.P.C. has admitted to intimacy and consensual physical relationship with the applicant.
7. The victim has identified one Azam as the principal offender who committed rape with her and not the applicant.
8. No allegation of commission of rape by the applicant with the victim has been made by the latter in the aforesaid statements.
9. Major inconsistencies in the F.I.R., statements of the victim under Section 161 Cr.P.C. and under Section 164 Cr.P.C. discredit the prosecution case.
10. The victim was never confined or bound down. She was at public places but never resisted the applicant nor raised an alarm. Her conduct shows that she was a consenting party.
11. No medical to corroborate the commission of rape has been produced by the prosecution.
12. The case of the applicant is distinguishable from that of the principal offender Azam. Allegation of commission of rape has been made against the principal offender

Azam.

13. The applicant does not have any criminal history apart from this 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 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- Mayank 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.

However, the trial court is directed to conclude the trial within a period of one year from the date of receipt of a certified copy of this order. The learned trial court shall proceed with the hearing on a day to day basis to ensure that the above stipulated timeline of one year is strictly

adhered to. All prosecution witnesses also are directed to cooperate with the trial proceedings.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding.

Police and administrative authorities of the State are also directed to ensure that the coercive measures adopted by the court are given effect to in a scrupulous manner to ensure the presence of the witnesses on the appointed date before the trial court.

The trial Judge shall submit a fortnightly report on the progress of the trial and the steps taken to comply with this order to the learned District Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Aligarh by the Registrar (Compliance) by FAX.

Order Date :- 6.11.2023

Pravin