

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43201 of 2023

Applicant :- Anees

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

Counsel for Applicant :- Rajpal Singh

Counsel for Opposite Party :- G.A.,Gunjan Sharma

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. 210 of 2022 at Police Station-Bindki, District- Fatehpur under Sections 376D, 506 IPC and Section 5G/5J(II)/6 POCSO Act. The applicant is in jail since 21.05.2022.

The bail application of the applicant was rejected by the learned trial court on 04.08.2023.

The following arguments made by Shri Rajpal Singh, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Ms. Gunjan Sharma, learned counsel on behalf of the victim's family as part of the free legal aid granted by the High Court Legal

Services Committee upon recommendation of the Child Welfare Committee 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 prosecution case 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) The victim under in her statements under Sections 161 and 164 Cr.P.C. has stated that she is 17 years and 17 years and 10 months of age respectively.

(iv) Medico-legal examination (not the age determination test) records that the victim is 17 years of age.

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 it would establish the majority of the victim and falsify the prosecution case. The victim is in fact a major.

4. The victim in her testimony before the trial court has refuted the prosecution case of commission of rape by the applicant.
5. The victim has not identified as one of the principal offenders who committed rape with her in her deposition before the trial court.
6. The applicant is a law abiding citizen who cooperated with the police investigations and has joined the trial.
7. The trial is moving at a snail's pace and and shows no sign of early conclusion. The applicant cannot be faulted for the delay in the trial.
8. Inordinate delay in concluding trial has lead to virtually an indefinite imprisonment of the applicant, without any evidence to implicate him in the offence.
9. The right of the applicant to speedy trial has been violated.
10. The prosecution witnesses are deliberately delaying the conduct of the trial to ensure indefinite incarceration of the applicant.
11. The applicant does not have any criminal history apart from this case.
12. 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- **Anees** 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.

Learned counsel appearing for the High Court Legal Services Committee contends that she was appointed as counsel for the victim as part of free legal aid granted to the victim under the POCSO Act upon the recommendation made by the Child Welfare Committee. However, it is contended fairly that the learned counsel contacted the Child Welfare Committee and she has informed that the victim has not supported the prosecution case, no satisfactory answer was forthcoming from the Child Welfare Committee or from the father of the victim.

Order Date :- 6.11.2023

Jaswant