

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43308 of 2023

Applicant :- Rohit

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

Counsel for Applicant :- Vijay Bahadur Shivhare

Counsel for Opposite Party :- G.A.,Babita Upadhyay

Hon'ble Ajay Bhanot,J.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 41 of 2018 at Police Station- Bidhnoo, District- Kanpur Nagar under Sections 363, 366, 376, 504, 506 IPC and Section 3/4 of the POCSO Act. The applicant is in jail since 07.06.2023.

The bail application of the applicant was rejected by the learned trial court on 22.09.2023.

The following arguments made by Shri Vijay Bahadur Shivhare, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Chandan Agarwal, learned AGA and Ms. Babita Upadhyay, learned counsel for the informant 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 15 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 14 years and 6 months are unreliable.

(iii) The victim in her statement under Section 164 Cr.P.C. has asserted that she is above 17 years of age.

(iv). Medical report drawn up to determine the age of the victim opines that she is about 16 years of age.

Two submissions are made in regard to the aforesaid medical report. Firstly, the range of error in determining the age is about two years and the same should be read in favour of the applicant at this stage. Secondly, the relevant scientific criteria as per latest medical protocol which would establish the majority of the victim has been excluded from consideration in the medical report. The medical report is flawed. In fact the victim is 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 Section 161 Cr.P.C. has asserted that she accompanied the applicant to various public places.

7. No allegation of commission of rape by the applicant with the victim has been made in the statement under Section 161 Cr.P.C. and Section 164 Cr.P.C.

8. False and aggravated allegations were made by the victim in her testimony before the trial court at the behest of her parents only to save the failing prosecution case and deflect attention from her own conduct. The deposition of the victim could not be reconciled in her statement under Section 161 Cr.P.C. and Section 164 Cr.P.C. before the trial court. However, the Court does not propose to go into the detailed appraisal of evidence as it may prejudice the trial.

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

13. 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- Rohit 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 :- 6.11.2023

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