

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43313 of 2023

Applicant :- Sone Lal Keshari

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

Counsel for Applicant :- Saurabh Pandey

Counsel for Opposite Party :- G.A.,Manisha Chaturvedi

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 2023 at Police Station- Raipur, District- Sonbhadra under Sections 452, 323, 504, 506, 376(3), IPC, Section 3/4(2) of the POCSO Act and Section 3(1) r,s, 3(2) (V-a) of SC/ST Act. The applicant is in jail since 26.07.2023.

The bail application of the applicant was rejected by the learned trial court on 16.09.2023.

The following arguments made by Shri Saurabh Pandey, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Shrawan Kumar Dubey, 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. of 15 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 on the following grounds:

(i) There are material contradictions in the age of the victim as recorded in various prosecution documents.

(ii) The victim in her statement under Section 164 Cr.P.C. has asserted that she is above 15 years of age.

(iii). The medical report drawn up to determine the age of the victim opines that she is 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 delay in lodgment of the FIR in the facts and circumstances of this case is fatal to the prosecution case.

5. The victim and the applicant were intimate.

6. The applicant and the victim were found in a compromising position at the house of the victim.

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

8. The FIR has been registered at the behest of the parents only to deflect attention from the conduct of the victim.

9. The victim in her statement under Section 161 Cr.P.C. has admitted to intimacy with the applicant and also the fact that they were earlier caught in a compromising position and their relationship was exposed which led to a dispute between the families. The dispute was resolved amicably.

10. The victim in her statement under Section 164 Cr.P.C. has not made any allegation of commission of rape against the applicant.

11. Major inconsistencies in the FIR, statements of the victim under Section 161 and 164 Cr.P.C. discredit the prosecution case.

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- Sone Lal Keshari 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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