

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45197 of 2023

Applicant :- Zahid Ali

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

Counsel for Applicant :- Vivek Singh

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

Shri Paritosh Kumar Malviya, learned AGA-I 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.378 of 2023 at Police Station-Phase-2, Noida, District-Gautam Buddha Nagar under Sections 376, 506, 323 IPC and Section 3/4 of the POCSO Act. The applicant is in jail since 13.08.2023.

The bail application of the applicant was rejected by the learned trial court on 27.09.2023.

The following arguments made by Shri Vivek Singh, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Anurag Vajpai, learned counsel for the informant and Shri Paritosh

Kumar Malviya, learned AGA-I 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. as 17 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 raises 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 statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C. has asserted that she is 15 years and 17 years of age respectively.

(iii) The medical report drawn up to determine the age of the victim opines that she is 17 years of age (As per ossification test report).

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 F.I.R. alleges that the incident happened at the residence of the victim.

5. There is no sign of forced entry in the house of the victim where the incident occurred.

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

7. The applicant visited the house on being called by the victim for a lover's rendezvous.

8. The applicant has been nominated to deflect attention from the conduct of the victim.

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

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

11. 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-Zahid Ali 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 :- 27.10.2023

Ashish Tripathi