

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45894 of 2023

Applicant :- Chhotu Mewati Urf Ajman Ali

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

Counsel for Applicant :- Vijit Saxena

Counsel for Opposite Party :- G.A.,Dhirendra Kumar Verma,Renu Swarnkar

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. 388 of 2023 at Police Station-Shahganj, District- Agra under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act. The applicant is in jail since 23.08.2023.

The bail application of the applicant was rejected by the learned trial court on 19.09.2023.

The following arguments made by Shri Vijit Saxena, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Dhirendra Kumar Verma, learned counsel on behalf of the informant 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 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) 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. There is no lawful basis for the age related entry in the school record. The school records disclosing her age as 17 years are unreliable.

(ii) The victim under in her statements under Section 161 and 164 Cr.P.C. has stated that she is 17 years of age.

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

(iv) 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 and the applicant were intimate.

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

6. The victim in her statement under Section 164 Cr.P.C., had admitted to intimacy with the applicant. She further stated that she eloped with the applicant to Ludhiyana and stayed together in a hotel in the same room "since they were in relationship".

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

8. False and aggravated version has been made by the victim in her statement under Section 161 Cr.P.C. at the behest of her parents only to save the failing prosecution case.

9. The victim was never confined or bound down in any manner. The victim was present at various public places but never raised an alarm nor did she resist the applicant. The conduct of the victim shows that she was a consenting party.

10. Major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and Section 164 Cr.P.C. as well

as the recitals in the F.I.R. discredit the prosecution case.

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

12. The applicant has explained his criminal history. Learned AGA contends that the applicant has a criminal history of some more cases. Rejoining this issue, learned counsel for the applicant contends that the applicant is in jail. He does not have an effective paurokar. Hence, details of the case could not be obtained and stated in the bail application. However, relying on the records available with the learned AGA and the instructions received from his client, learned counsel for the applicant submits that the applicant was falsely nominated in the said cases. The said cases do not depict commission of heinous crime and have no bearing on the instant bail application.

13. 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- Chhotu Mewati Urf Ajman 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 :- 7.11.2023

Jaswant