

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46297 of 2023

Applicant :- Abhishek Singh

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

Counsel for Applicant :- Rahul Mishra,Akhilesh Kumar Tiwari

Counsel for Opposite Party :- G.A.,Rajnath Ydav

Hon'ble Ajay Bhanot,J.

Personal affidavit filed by Shri Paritosh Kumar Malviya, learned A.G.A.-I on behalf of Shri Ram Kumar, Additional Director General of Police, Varanasi Zone, Varanasi is taken in the record.

Shri Ram Kumar, Additional Director General of Police, Varanasi Zone, Varanasi is present before the Court.

Personal appearance of Shri Ram Kumar, Additional Director General of Police, Varanasi Zone, Varanasi is exempted.

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.145 of 2023 at

Police Station-Sujanganj, District-Jaunpur under Sections 354, 504, 506, 376D IPC and Section 5/6 of the POCSO Act and Section 67(A) of the IT Act. The applicant is in jail since 03.09.2023.

The bail application of the applicant was rejected by the learned trial court on 15.09.2023.

The following arguments made by Shri Akhilesh Kumar Tiwari, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by 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 16 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 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 basis of the said entry in the school records. The school records disclosing her age as 17 years are unreliable.

(iii) The victim in her statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C. has asserted that she is 16 years of age.

(iv) The medical report drawn up to determine the age of the victim opines that she is 18 years of age. The victim is in fact a major.

4. The victim and the applicant were intimate. Their relationship got exposed.

5. The F.I.R. has been lodged only to deflect attention from the conduct of the victim.

6. No allegation of commission of rape has been made by the victim against the applicant in the F.I.R.

7. No indecent photographs or videos of the victim were captured by the applicant nor were they circulated by him.

8. The applicant was not nominated as the principal offender who committed rape with her even in her statement under Section 161 Cr.P.C.

9. However, false and aggravated allegations were made by the victim in her statement under Section 164 Cr.P.C. at the behest of her parents to save the failing prosecution

case.

10. Major inconsistencies in the FIR, the statements under Section 161 and 164 Cr.P.C. 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 case of the applicant is distinguishable from the principal offenders, namely, Suraj and Pradeep Singh.

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

14. 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-Abhishek Singh 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.

However, this Court finds that there are deficiencies in the investigations, inasmuch as, indecent videos have not been recovered. This Court is noticing a major faultline in the functioning of the Uttar Pradesh Police. This pertains to effective and unbroken supervision by superior officers over investigations as per law. An effective supervision improves the quality of investigations and also to bring the real offenders to book and prevents implication of innocents citizens.

At this stage, this Court deems it appropriate to direct the Director General of Police, Uttar Pradesh, Lucknow to take appropriate measures to ensure that the effective and proficient supervision is made by the concerned superior officers in accordance with law over the investigations into various criminal cases.

All witnesses have stated that the videos were circulated but during the course of investigations, the videos have not been recovered. This reflects apart from lack of proficiency of the investigation. It also depicts the poor quality of supervisory control over the investigations.

Learned Government Advocate to ensure that a copy of this order is placed before the Director General of Police,

Uttar Pradesh, Lucknow as well as Additional Director
General of Police, Varanasi Zone, Varanasi for
compliance.

Order Date :- 7.11.2023

Ashish Tripathi