

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48365 of 2023

Applicant :- Aman

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

Counsel for Applicant :- Sajiya Parveen

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

Shri Shravan Kumar Dubey, 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. 225 of 2023 at Police Station-Sasni Kotwali(Sasni), District-Hathras under Sections 363, 366, 376 IPC and Section 5/6 POCSO Act and Section 3(1)ba(i)va, 3(2)(V) SC/ST Act. The applicant is in jail since 31.07.2023.

The bail application of the applicant was rejected by the learned trial court on 06.10.2023.

The following arguments made by Ms. Sajiya

Parveen, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Ms. Archana Singh, learned counsel on behalf of the victim as part of the free legal aid granted by the High Court Legal Services Committee upon recommendation of the Child Welfare Committee and Shri Shravan 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 of 15 years of age 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)** on the following grounds:

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

(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 of the victim in the school records. The school certificate showing her age as 15 years is not reliable.

(iii) The victim in her statements under Section 161 Cr.P.C. has asserted that she is 15 years of age respectively.

(iv) The medical report drawn up as per the latest scientific criteria and medical protocol to determine the age of the victim opines that she is 18 years of age. The victim is in fact a major.

4. Delay in lodgment of the FIR in the facts of this case is fatal to the prosecution case.

5. The victim and the applicant were intimate.

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

7. The victim in her statement under Sections 161 and 164 Cr.P.C. has admitted to intimacy with the applicant. She has also stated that she had eloped with the applicant of her own volition. Lastly, the victim has asserted that she got married to the applicant of her own free will and their marriage has been consummated and she is an expectant mother.

8. No allegation of commission of rape by the applicant with the victim has been made in the

aforesaid statements.

9. Major inconsistencies in the FIR, the statement under Section 161 and 164 Cr.P.C. discredit the prosecution case.

10. 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.

11. Medical evidence to corroborate commission of rape by the applicant with the victim has not 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 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-**Aman** 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.

The ossification report records that the victim is 18 years of age. The District Magistrate, Hathras shall ensure that the C.W.C. shall not make a recommendation for providing legal aid to victim on a mechanical basis. It shall be made after considering all relevant facts and recording satisfaction that the victim satisfies the criteria for grant of legal aid.

A copy of this order be communicated to the District Magistrate, Hathras as well as the Chairman, Child Welfare Committee, Hathras by the Registry.

Order Date :- 9.11.2023

Vandit