

Court No. - 37

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50603 of 2023

Applicant :- Jitendra Kumar @ Jeetu

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

Counsel for Applicant :- Saurabh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

This is the second bail application.

Ms. Sujata Chaudhary, 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. 290 of 2015 at Police Station-Vithoor, District-Kanpur Nagar under Sections 364, 342, 376 IPC and Section 3/4 POCSO Act and Section 3(2)5 S.C./S.T. Act. The applicant is in jail since 23.02.2023.

The bail application of the applicant was dismissed by this Court on 19.09.2023 as 'not pressed' as the learned counsel for the applicant did not make any

submission on the merits of the case. Learned counsel for the applicant prays for and is granted leave to argue the matter on merits.

The following arguments made by Shri Saurabh Kumar Pandey, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Ms. Sujata Chaudhary, 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 shown as a minor in the prosecution case only to 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.

(ii) The victim in her statement under Section 164 Cr.P.C. has asserted that she is 12 years of age.

(iii) Medico-legal examination (not the age determination test) records that the victim is 16 years of age.

(iv) The medical report drawn up to determine the age of the victim opines that she is around 15 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 applicant was falsely nominated in this case.

5. False and aggravated allegations were made under Section 164 Cr.P.C. by the victim at the behest of her family members only to deflect attention from her own conduct and save the failing prosecution case.

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

7. Medical evidence to corroborate commission of

rape by the applicant with the victim has not been produced by the prosecution.

8. The victim has repudiated the prosecution case in her testimony before the trial court. She has been declared hostile at the instance of the prosecution.

9. The applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial.

10. The trial is moving at a snail's pace and shows no signs of an early conclusion. The applicant is not responsible for the delay in the trial proceedings.

11. As per the chargesheet, the prosecution proposes to examine 16 witnesses. However, only two witnesses have been examined till date.

12. Inordinate delay in concluding trial has lead to an indefinite detention of the applicant without there being any credible evidence to implicate him in the offence. Right of the applicant to a speedy trial has been violated.

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 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-**Jitendra Kumar @ Jeetu** 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 :- 1.12.2023

Vandit