

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36199 of 2021

Applicant :- Neeraj

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Niklank Kumar Jain

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori,J.

Heard Shri Niklank Kumar Jain, learned counsel for the applicant, learned A.G.A. for the State through Video Conferencing and perused the material on record.

The present bail application has been filed on behalf of applicant **Neeraj** under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 421 of 2019 for offence punishable under Sections 363, 376 of the Indian Penal Code, and Section 3/4 Protection of Children From Sexual Offences Act, registered at Police Station Jaithra, District Etah, during pendency of the trial.

Brief facts of the case are that the First Information Report dated 16.10.2019 has been lodged by the father of the victim aged about 16 years against the applicant and co accused Bhanu, (elder brother of the applicant) alleging therein that co-accused Bhanu and the applicant enticed away the daughter of the first informant on 14.10.2019 at about 2.00 P.M which was seen by one Sudhir while she was being taken by Bus at Dhumari.

After lodging the F.I.R., victim has been recovered on 18.10.2019. Statement of the victim under Section 161 has been recorded on 19.10.2019. Medical examination of the victim has been conducted on 18.10.2010 Statement of the victim under section 164 Cr.P.C. has been recorded on 21.10.2019. After completing investigation, charge-sheet has been submitted against the applicant and co-accused Bhanu . The applicant has been arrested on 20.10.2019.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that co-accused Bhanu is the elder brother of the applicant. It is further submitted that there are material contradiction and improvement in the statement of the victim recorded under section 161 and 164 Cr.P.C. It is further submitted that before the Medical Officer, she stated that she had gone along with the co-accused Bhanu. It is also submitted that as per her High School Certificate, her

age is 17 years and 9 months at the time of incident. It is further submitted that as per her Pathological report, no spermatozoa was detected. The victim resided with co-accused Bhanu in a rented room at Noida. It is further submitted that co-accused Bhanu has already been granted bail vide order dated 02.11.2020 by Coordinate Bench of this Court in Criminal Misc Bail Application No. 33485 of 2020. The applicant is languishing in jail since 20.10.2019.

Learned counsel for the applicant also submitted that the applicant has no other previous criminal history. It is lastly submitted that if the applicant is released on bail, he shall not misuse the liberty of bail.

Per contra, learned AGA has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the applicant and he submits that the allegations involved are very serious in nature but he could not point out any material to the contrary. He further submits that in case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

After considering the facts of the present case it prima facie appears that;

(a) there are material contradiction and improvement in the statements of the victim recorded under sections 161 and 164 Cr.P.C. it would not be appropriate to state the same in details at this stage;

(b) the victim resided with co-accused Bhanu in rented room at Noida;

(c) applicant is the elder brother of the applicant;

(d) age of the victim is 17 years and 9 months at the time of incident as per High School Certificate;

(e) in her Pathological report of the victim, no spermatozoa was seen.

It is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being tampered with.

Taking into account the totality of facts and keeping in mind, the ratio of the Apex Court's judgment in the case of **State of Rajasthan v. Balchand @ Baliy (1977) 4 SCC 308, Gudikanti Narasimhulu And Ors., v. Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, Ram Govind Upadhyay v. Sudarshan Singh & Ors., (2002) 3 SCC 598, Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.,**

(2010) 14 SCC 496 and Mahipal v. Rajesh Kumar & Anr., (2020) 2 SCC 118, the larger interest of the public/State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. Hence, the present bail application is allowed.

Let applicant, **Neeraj** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.

(ii) The applicant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the applicant is deliberate or without sufficient case, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance of law after the release of the applicant, keeping in view the law laid down by the Supreme Court in the case of **Alakh Alok Srivastava v. Union of India & Anr., AIR 2018 SC 2440**, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant alongwith a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 31.1.2022

aks