

Court No. - 67

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17968 of 2022

Applicant :- Rajan Vishwakarma

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

Counsel for Applicant :- Lok Nath Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

Heard learned counsel for the applicant Shri Lok Nath Shukla and learned A.G.A. Perused the record.

Pursuant to order dated 6.7.2022 notices were issued to opposite party no.2 as the matter related to Section 3/4 of POCSO Act. After service of notice, a compliance report has been filed by Praveen Kumar Kashyap, Sub Inspector of Police Station Harpur Godhat, District Gorakhpur, mentioning therein that the efforts were made to serve the notices upon the informant Munni Devi. It is alleged that annexing the copy of bail application the I.O. of the case has tried to serve the copy of bail application upon the opposite party no.2 informant but the report of C.J.M., Gorakhpur indicates that the informant left her native place and went to some unknown place at Delhi without any address, therefore, no notice could be served upon opposite party no.2.

The applicant is facing prosecution in Case Crime No.123 of 2021, u/s 376, 506 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station-Harpur Budhat, District Gorakhpur. The applicant is in jail since 24.11.2021.

Contention raised by learned counsel for the applicant is that Munni Devi has lodged F.I.R. against the applicant with the allegation that the applicant is in physical relationship with his daughter, aged about 17 years, for last two years and when the informant came to know about this relationship, then she went to the applicant's place to make a complaint, on which the applicant has threatened her that he is in receipt of obscene still photographs and videos of the girl and he would make them viral. On the similar lines, the victim girl has given statement before the doctor that her mother had fixed her marriage with some other person and infuriated by this the applicant has sent the obscene still photographs and videos to her fiancé.

On making a candid query from the learned A.G.A., as to whether during investigation the police have recovered any

obscene photographs or videos, he replied that as per his instruction there is no such viral obscene still photographs or videos have been recovered during investigation by the police. The police have submitted charge sheet u/s 376, 506 I.P.C. and 5/6 of POCSO Act. There is no allegation of any penal provision under the Information Technology Act.

Now coming to the allegation of rape upon the girl, she claims that she is about 17 years of age and she is not high school pass, under circumstances, if the benefit of two years is given either ways, she seems to be a major girl. More particularly it is her own admission that she was in relationship with the applicant for last two years without any resistance, allegedly on the false pretext of marriage. This consent of the girl by any stretch of imagination does not seem to have obtained under coercion, threat or duress or she was unable to understand the nature and consequence of that to which she gives her consent as contemplated under Section 90 of I.P.C. She has established physical relationship for a considerable period of two years with the applicant and in absence of any obscene still photographs or video it is clearly indicated that she was a consensual party to the entire episode as she claims in her 164 statement.

Learned A.G.A. has opposed the bail application but could not dispute the fact that she was in relationship with the applicant for last two years and there is no obscene still photographs or video of the victim with the applicant.

Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, period of detention undergone by him, unlikelihood of early conclusion of trial and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant ***Rajan Vishwakarma***, who is involved in aforementioned case crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS

ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS COUNSEL. IN CASE OF HIS ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT IS DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST HIM IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 24.11.2022/M. Kumar