HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Criminal Miscellaneous 2nd Bail Application No. 10946/2022

Bhivaram Yadav Son Of Shri Mool Chand Yadav, Aged About 20 Years, Resident Of Dhani Cholai, Tan Mundru, Police Station Shrimadhopur, District Sikar (Raj.) (At Present In Distt. Jail Sikar)

----Petitioner

Versus

State Of Rajasthan, Through P.P.

----Respondent

For Petitioner(s) : Mr. Vijay Singh

For Respondent(s) : Mr. Rajendra Yadav, AAG

Mr. Anil Kumar

HON'BLE MR. JUSTICE FARJAND ALI

<u>Order</u>

17/01/2023

- 1. The 2nd bail application has been filed under Section 439 Cr.P.C. on behalf of accused-petitioner Bhivaram Yadav Son Of Shri Mool Chand Yadav against the impugned order dated 19.04.2022 passed by learned Court below for the offence under Sections 376(2)(i), 376(DA), 376(2)(i)/109 & 506 IPC and Sections 3/4, 5(G)/6, 5(J)(ii)/6, 3/4 & 16/17 of POCSO Act in FIR No.461/2020 registered at Police Station Udhyog Nagar, District Sikar, Rajasthan.
- 2. Learned counsel for the accused-petitioner submits that a false case has been foisted against the petitioner with an ulterior motive. The accused-petitioner has nothing to do with the alleged offences. Learned counsel submits that the victim is not at all a

credible witness in view of the incongruency and variance in her statements recorded under Section 161 Cr.P.C. on 27.09.2020, under Section 164 Cr.P.C. on 29.09.2020 and then during trial on 11.02.2021 and thereafter, on 28.10.2022. Initially, under Section 161 & 164 Cr.P.C., besides allegation of sexually abusing her, similar nature of allegations were made against one- Raj Choudhary but to the utter dismay, even when she was examined in trial on two occasions, she deliberately did not name the accused- Raj Choudhary and as such placing reliance on her testimony would not be safe. It is vehemently urged that the substratum of allegation made in the FIR and statements recorded under Section 161 & 164 Cr.P.C. and statement recorded in trial, would be the fear that she was perceiving and the threat which was being given to her by the accused regarding taking nude and obscene photographs and in the garb of displaying or making the same viral, her keeping mum for a long time, has been alleged but neither any mobile or any other instrument has been recovered nor any obscene or lascivious material has been seized and brought before the Court and as such the accusation regarding the threat of having nude photographs, falls on the earth and even there is no charge under the Information Technology Act. He is behind the bars since long time. Trial is likely to take long time to conclude. No fruitful purpose would be served by keeping the accused-petitioner behind the bars till disposal of the case.

3. Per contra, learned Public Prosecutor and learned counsel for the complainant-respondent have vehemently opposed the bail application.

- 4. Considering the arguments advanced by the counsel for the parties and looking to the overall facts and circumstances of the case, this court deems it just and proper to enlarge the accused-petitioner on bail.
- 5. Accordingly, the 2nd bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner- **Bhivaram Yadav Son Of Shri Mool Chand Yadav**, shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/-with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

SAHIL SONI /10