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HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:90900
Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14283 of 2024

Applicant :- Shankar Sonkar Alias Pakhandu
Opposite Party :- State Of U.P. And 3 Others
Counsel for Applicant :- Desh Ratan Chaudhary,Siddharth Chaudhary
Counsel for Opposite Party :- G.A.,Jitendra Kumar Shukla

Hon'ble Ajay Bhanot,J.
Shri Rishi Chadha, 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. 270 of 2023 at Police Station-Kotwali Dehat, District- Mirzapur under Sections 313, 376, 504, 506 IPC and Section 3/4 of POCSO Act. The applicant is in jail since 02.01.2024.
The bail application of the applicant was rejected by the learned trial court on 14.02.2024.
The following arguments made by Shri Desh Ratan Chaudhary and Shri Siddharth Chaudhary, learned counsels on behalf of the applicant, which could not be satisfactorily refuted by Shri Jitendra Kumar Shukla, learned counsel on behalf of the first informant and Shri Rishi Chadha, learned AGA from the record, entitle the applicant for grant of bail.
1. The victim was wrongly shown as a minor of 17 years in the F.I.R. only to falsely implicate the applicant under the stringent provisions of the POCSO Act and cause his imprisonment.
2. 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) is contested 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 statements under Sections 161 and 164 Cr.P.C. has stated that she is 17 years of age respectively.┐
(iii) The medical report drawn up to determine the age of the victim opines that she is 18-20 years of age. In fact the victim is a major.
3. The victim and the applicant's brother were intimate. The couple had consensual physical relations.
4. The victim became an expectant mother. The relationship of the couple went awry. However, the applicant had taken the victim to the hospital for medical examination and ultrasound procedure. There was no cause for the applicant to assault the victim.
5. The victim by her own admission and admission of her own aunt was under treatment at her aunt's house. Infact she was treated by a quack.┐
6. Medical negligence led to pre-mature termination of the pregnancy.
7. The applicant cannot be linked with the aforesaid prosecution evidence.
8. Medical evidence to corroborate commission of rape by the applicant with the victim has not been produced by the prosecution.
9. The applicant has explained his criminal history. It is also contended that the applicant has become a soft target and a convenient scapegoat for the police authorities who nominated him in a number of false cases to burnish their professional credentials. The said cases do not have any bearing on the instant bail application.
10. 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- Shankar Sonkar Alias Pakhandu 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.
(iii) The learned trial court is directed to fix the sureties after due application of mind in light of the judgement passed by this Court in Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023).
The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the applicant.
Before parting some observations have to be made in the facts of this case. The learned trial court has failed to comply with the judgment rendered by this Court in Monish (supra) regarding the manner of consideration of age of the victim in bail applications filed by the accused persons under the POCSO Act.┐
A copy of this order as well as a copy of the judgment in Monish (supra) shall be provided to the learned District Judge, Mirzapur to ensure that the learned trial courts are guided by the law laid down by this Court.┐
It is clarified that the above observations shall not be construed adversely against any judicial officer.
Considering the gravity of the offence, interest of justice will be served by directing the learned trial court to expedite the trial within a stipulated period of time.
Though no specific time frame to conclude the trial has been set out in the Cr.P.C., yet the legislative intent of Section 309 Cr.P.C. is explicit. The scheme of the provision clearly shows that the legislative intent is to conclude the trial in an expeditious time frame. In the facts of this case, the learned trial court shall make all endeavours to conclude the trial preferably within a period of one year from the date of receipt of a certified copy of this order.
The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.
All witnesses and counsels are directed to cooperate with the trial proceedings.
The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the trial.
The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.
The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.
The Superintendent of Police, Mirzapur, shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.
The delay in the trials caused by the failure of the police authorities to serve summons or execute coercive measures to compel the appearance of witnesses at the trial despite a statutory mandate, is an issue of grave concern. The said issue had arisen for consideration before this Court in Bhanwar Singh @ Karamvir Vs. State of U.P. (Criminal Misc. Bail Application No. 16871 of 2023) & Jitendra v. State of U.P. (Criminal Misc. Bail Application No.9126 of 2023) and was decided by the judgements dated 24.08.2023 & 20.12.2023 respectively. This Court in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) had issued certain directions to the police authorities regarding their statutory duty to promptly serve summons and execute coercive processes to compel the appearance of witnesses.
The Director General of Police, Government of U.P. as well as Principal Secretary (Home), Government of U.P. had taken out relevant orders in compliance of judgements in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) and nominated the Senior Superintendent of Police of the concerned districts as the nodal officials for implementing the said judgments.
The counsels as well as the learned trial court are directed to comply with the directions issued by this Court in Noor Alam Vs. State of U.P. rendered in Criminal Misc. Bail Application No. 53159 of 2021. In case any strike happens during the course of the trial, the learned trial court is directed to ensure full compliance of the directions issued in Noor Alam (supra) to prevent delay in the trial.
In case the police authorities are failing to comply with the directions issued by this Court in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) and do not implement the said directions of the Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. in regard to service of summons and execution of coercive measures to compel the appearance of witnesses, the learned trial court shall direct the concerned Senior Superintendent of Police to file an affidavit in this regard.
The learned trial court shall be under an obligation to examine whether the judgements of this Court in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) as well as directions of Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. issued in compliance thereof have been implemented or not and to take appropriate action as per law.
The learned trial court shall also take appropriate measures in law after receipt of such affidavit which may include summoning the concerned officials in person.
It is further directed that in case any accused person who has been enlarged on bail does not cooperate in the trial or adopts dilatory tactics, the learned trial court shall record a finding to this effect and cancel the bail without recourse to this Court.
The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.
A copy of this order be communicated to the learned trial judge through the learned District Judge, Mirzapur as well as Superintendent of Police, Mirzapur by the Registrar (Compliance) by E-mail.
Order Date :- 20.5.2024
Jaswant

