

Sumit vs State Of U.P. on 2 August, 2021

Author: Sanjay Kumar Pachori

Bench: Sanjay Kumar Pachori

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21283 of 2021

Applicant :- Sumit

Opposite Party :- State of U.P.

Counsel for Applicant :- Raju Kanaujia

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori,J.

Heard Sri Raju Kanaujia, learned counsel for the applicant, learned A.G.A. for the State and perused the record of the case.

The present bail application has been filed on behalf of applicant with a prayer to release him on bail in Case Crime No.131 of 2021, under Sections 354, 452, 506 I.P.C.,7/8 of the Protection of Children From Sexual Offenses, 1986 Police Station- Tirwa, District- Kannauj, during pendency of trial.

It has been submitted by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case due to ulterior motive. As per allegation of the First Information Report, on 26.03.2021 at 2.00 PM, the applicant called the victim and the victim told this to her aunt (Bua) being infuriated the applicant misbehaved with the victim. It is further submitted that the victim is aged about 18 years and she refused to get herself medically examined. It is further submitted that there is no criminal antecedent to his credit. It is next submitted that there is also no

possibility of the applicant either fleeing away from the judicial process or tampering with the witnesses. The applicant, who is languishing in jail since 28.03.2021, undertakes that he will not misuse the liberty, if granted. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Per contra learned A.G.A. has opposed the prayer for bail of the applicant and argued that in case, the applicant is released on bail, he will again indulge in similar activities and he will misuse the liberty of bail. It is settled position of law that bail is the rule and committal to jail is an exception in the case of State of Rajasthan Vs. Balchand @ Baliay (1977) 4 SCC 308, the Apex Court observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution and opined para 2 "The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do. not intend to be exhaustive but only illustrative." and considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of Gudikanti Narasimhulu And Ors vs Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, 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.

Let applicant, Sumit, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned with the following conditions-

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

It is clarified that anything said in this order is 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.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the petitioner along-with 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 :- 2.8.2021 aks