

# **Talib vs State Of U.P. And 3 Others on 16 May, 2022**

**Author: Sanjay Kumar Pachori**

**Bench: Sanjay Kumar Pachori**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 207 of 2022

Applicant :- Talib

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

Counsel for Applicant :- Sarvesh Kumar Dubey,Virendra Singh

Counsel for Opposite Party :- G.A.,Pradeep Kumar Bhardwaj

Hon'ble Sanjay Kumar Pachori,J.

Heard Shri Sarvesh Kumar Dubey, learned counsel for the applicant and Shri Ram Adhar, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of applicant Talib under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 0432 of 2020 for offence punishable under Sections 363, 376, 120-B of the Indian Penal Code and Section 3/4 Protection of Children from Sexual Offences Act (hereinafter referred as "POCSO Act"), registered at Police Station Syana, District Bulandshahr during pendency of the trial, after rejecting the bail application of the applicant by Additional Sessions Judge/Special Judge (POCSO Act), Bulandshahr vide order dated 19.03.2021.

Brief facts of the case are that the First Information Report dated 23.10.2020 has been lodged against the applicant and two other named co-accused persons by father of the victim stating that

prior 15 to 20 days the applicant threatened to the first informant for enticing away his minor daughter. First informant has not lodged any first information report against such incident. On 22/23.10.2020 when the first informant awoke in the night at about 1:30 a.m. he found that his daughter is not present in her room. He informed by his brother that the applicant and other two named co-accused persons enticed away his daughter aged about 16 years.

After lodging the first information report, statement of victim under section 161 Cr.P.C. has been recorded on 26.02.2021, the victim has denied to get her medical examination on 26.02.2021 at 12:15 p.m. The statement of victim under section 164 Cr.P.C. was also recorded on 26.02.2021. After recording the statement of the victim, medical examination of the victim was again conducted on 27.02.2021. After recording the statements of other prosecution witnesses charge-sheet has been submitted against the applicant and other two named co-accused persons on 25.04.2021.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. As per high school certificate age of the victim was 17 years 7 months and 4 days at the time of incident. It is further argued that the victim has travelled with applicant from her house to Bulandshahr then Ghaziabad and she left with the applicant for about 4 months. It is further argued that there is material contradiction and improvements in the statements of the victim recorded under Section 161 and 164 of Cr.P.C. Victim has firstly implicated two co-accused persons for committing gang rape with applicant but the charge-sheet has been filed against two other named persons i.e. Salim and Jubair under sections 363 and 120-B I.P.C and against co-accused Noorhasan under section 368 I.P.C. It is further argued that victim has gone from her house in the night of 22/23.10.2020 at about prior 1:30 a.m. It is further argued that victim has firstly denied to get her medical examination after recording of statement under section 164 Cr.P.C. medical examination has been conducted on 27.10.2021. There is no external or internal injuries were found on the body of the victim.

It is next submitted that the applicant has no previous criminal history and if the applicant is released on bail, he shall not misuse the liberty of bail.

Per contra, learned A.G.A. has supported the order passed by the Sessions court and vehemently opposed the prayer for grant of bail to the applicant and 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) The applicant was 19 years old at the time of incident.

(b) As per high school certificate age of the victim was 17 years 7 months and 4 days at the time of incident.

(c) The victim has travelled with applicant from Bulandshahr to Ghaziabad and she has resided with applicant for about 4 months.

(d) There is a material contradiction and improvements in the statements of the victim recorded under Sections 161 and 164 of Cr.P.C., it would not be appropriate to discuss the same at this stage.

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 @ Baliay (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, Talib 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 cause, 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 with law after the release of the applicant, 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 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 :- 16.5.2022 Vikram