

Sameer Pachauri vs State Of U.P. And 3 Others on 7 June, 2022

Author: Sanjay Kumar Pachori

Bench: Sanjay Kumar Pachori

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 47

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11526 of 2022

Applicant :- Sameer Pachauri

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

Counsel for Applicant :- Ravindra Sharma, Preet Pal Singh Rathore

Counsel for Opposite Party :- G.A., Ravi Shankar Tripathi

Hon'ble Sanjay Kumar Pachori, J.

Heard Shri Ravindra Sharma and Sri Narendra Nath Advocate, holding brief of Sri Preet Pal Singh Rathore, learned counsel for the applicant, Sri Ravi Shankar Tripathi, learned counsel for the first informant, Sri Pankaj Kumar Tripathi, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of the applicant Sameer Pachauri under Section 439 of the Code of Criminal Procedure, with a prayer to release him on bail in Case Crime No. 587 of 2017 for offence punishable under Sections 363, 366, 376D, 506 of Indian Penal Code and Section 5/6 Protection of Children from Sexual Offences Act, registered at Police Station Ujhani District Budaun during pendency of the trial, after rejecting the bail application of the applicant by the Special Judge, POCSO Act, Badaun vide order dated 13.12.2021.

Brief facts of the case are that the First Information Report dated 15.11.2017 has been lodged by the father of the victim against the applicant and other named accused person Sumit Yadav under sections 328, 364 and 354 I.P.C. stating therein that his daughter had gone to nearby Shiv Temple with her elder sisters, namely, Vineeta and Anita in the morning at 6.00 a.m. on 25.09.2017 but all of a sudden, his daughter disappeared from the temple and her both elder sister returned home assuming her to come back home after performing Pooja. When they did not find her at home, they told to their father as to what happened. Hearing this, her father immediately rushed to the police station for lodging missing report for her daughter and after the said missing report being lodged, police came into action and information to this effect has also been sent to other police stations. Thereafter on the same day, her daughter was recovered at about 3.00 p.m near Kachla. When her daughter gained sense, she told her father that she was being kidnapped by the applicant and other named accused person after wrapping her mouth by handkerchief and seated her on motorcycle and roamed here and there doing vulgar activities with her and they informed the police by dialing 100 from her mobile just to misguide the police intimating that she was saved by them while she was going to sink into the water of Ganga. Saying this applicant and other named accused persons left her in a desperate position and escaped from the spot.

After lodging the first information report, statement of victim under section 161 Cr.P.C. was recorded on 07.12.2017. Statement of victim under section 164 Cr.P.C. was recorded on 28.02.2018. After completing investigation, police filed closer report (Final Report) on 15.03.2018. On a Protest Petition of the first informant, applicant and other accused persons were summoned on 22.02.2019. The applicant was arrested on 12.11.2021.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive and old enmity. It is further submitted that F.I.R. in question has been lodged after two and half months of the alleged incident while the victim was in the custody of the first informant, there was no allegation with regard to offence of gang rape being committed with her. It is further submitted that the statement of victim under section 161 Cr.P.C. was recorded on 17.12.2017 after about two and half month of the alleged incident in which, she did not disclose about her being gang raped. It is further submitted that allegation of gang-rape has been levelled against the applicant and other accused persons for the first time in the statement of victim recorded under section 164 Cr.P.C. on 28.02.2018 after about 5 months of the alleged incident.

It is further submitted that on 25.09.2017, four days prior to incident, after getting fed-up by the inhuman torture of father, victim attempted to commit suicide by plunging into river and the applicant, who happened to be there not only saved her but informed the police by dialing 100 and the police informed the family members of the victim. It is further submitted that as High School Certificate, age of the victim is 17 years, 5 months and 17 days old at the time of alleged incident. It is further submitted that another F.I.R being case crime no. 121 of 2018 under sections 363, 366 IP.C. has also been lodged on 23.02.2018 against the applicant, co-accused Sumit, his brother Nannhey and Kamlesh in which police submitted final report after investigation on 15.03.2018.

He has next argued that the applicant has no criminal history his credit. If the applicant is released on bail, he shall not misuse the liberty of bail. The applicant is not convicted in cognizable offence by any court.

Per contra, learned AGA 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 and the delay in lodging the FIR cannot be said to be fatal to the case at this juncture while considering the application of bail. 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) F.I.R. has been lodged after two months and 15 days of the alleged incident after recovery of victim on the same day under sections 328, 364, 354 of I.P.C.;

(b) As per High School Certificate, age of the victim is 17 years, 5 months and 17 days old at the time of alleged incident:

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

(d) the applicant has informed the police 4 days prior to the incident, on 25.09.2017 at 14:40 hours with regard to attempt of suicide by the victim.

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, Sameer Pachauri, 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 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 alongwith 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 :- 7.6.2022 aks