

A.F.R.

Court No. - 21

Case :- BAIL No. - 1419 of 2021

Applicant :- Monish

Opposite Party :- State of U.P.

Counsel for Applicant :- Pramod Kumar Yadav, Brijesh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Kunvar Srivastav, J.

1. The case is called out through video conferencing.
2. Learned counsel for the applicant, Sri Pramod Kumar Yadav, Advocate appears through video conferencing in virtual hearing and learned A.G.A. for the State, Sri Prem Prakash, Advocate also appears through video conferencing in virtual hearing.
3. The present bail application is filed on behalf of the accused-applicant- Monish, who is involved in Case Crime No.169/2020 under Sections 376 of I.P.C., registered at Police Station - Makhi, District-Unnao.
4. The occasion of present bail application has arisen on rejection of bail plea of applicant by learned Sessions Judge, Unnao vide order dated 06.01.2021.
5. Stating the prosecution case against the accused, in brief, learned counsel stated the victim had gone out to urinate outside the house at 11:00 P.M. when the accused caught hold of her and raped her by dragging into the maize field. Noticing that she did not come back for a long time attending the call of nature in the house, her parents came out searching for her. They throwing torch light in the direction of victim's cry coming from the field called her loudly, then the accused ran away leaving the victim in a hurry.
6. On investigation, after lodging of the first information report with above facts, the charge-sheet against the accused is submitted in the Court under Section 376 of the Indian Penal Code.
7. Learned counsel stated, accused-applicant is in jail since 11.9.2020 for no fault of him. He pressed the application for release of the accused on bail on the ground that the victim was over 18 years of age at the time of incident and had consensual sexual intercourse of with the accused. False allegations have been made by her against the accused under the pressure of the parents. Her medical examination

confirmed her age over 18 years. Learned counsel further argued that her medical examination also did not confirm rape. Her hymen is already old torn suggesting, she is used to sexual intercourse. It has also been argued that there are material contradictions in her statements recorded under Section 161 Cr.P.C. by the Investigating Officer and that recorded by the Magistrate in Court under Section 164 Cr.P.C. As such, learned counsel vehemently pressed that the allegation of rape is neither supported with her statement nor from medical evidence.

8. Learned counsel lastly argued that the accused-applicant has no criminal antecedent and therefore he should be released on bail.

9. Learned A.G.A. opposing the prayer for bail argued, the victim girl is educated upto class 10. She was of 18 years of age when the incident of rape with her happened. Immediately, thereafter lodging the first information report whatever fact she had stated that finds no deviation and the same is reiterated in statement recorded under Section 161 Cr.P.C. and thereafter in statement under Section 164 Cr.P.C. Since there is no material contradiction in the statement, therefore, the credibility of allegation as to the rape committed on her by the accused is established. So far as the medical examination is concerned, the same was done after four days from the date of incident on 10.9.2020. Thereafter, sign of rape could not be found, old torn hymen is not sign of being a girl used to the sexual intercourse. It generally tears up with the age, the age of victim is 18 years, which is material for this particular fact.

10. He lastly argued that the 18 years old girl was an easy victim for a well grown adult male of more than 23 years who was well acquainted about her and her parents. The law does not permit the medical evidence to over ride the statement of the victim of rape if found credible. Here the statements of the victim is reliable and credible, therefore, the accused cannot set forth his innocence. Moreover, he is a local resident and competent to adversely affect the witnesses as well as to coerce the victim and her parents therefore the bail application must be rejected, so as to provide fair trial.

11. Heard the rival contentions of the learned counsel for the applicant and the learned A.G.A., Sri Prem Prakash, Advocate, perused the version of complainant as stated in First Information Report, the statement of victim under Section 161 Cr.P.C. is quite similar to that version and thereafter the statement recorded by the Magistrate has also no deviation from the allegation of rape. The material fact that

victim when came out of house in the night at about 11.00 p.m. to urinate she was caught hold by the accused and dragged in the nearby maize field, where she was raped by him. There is no deviation in the iteration of the material facts in all the three documents on record made Annexure Nos.1, 2 and 3 to the affidavit filed in support of the bail application. This is not denied in the aforesaid affidavit that the house from which the victim girl came out is the dwelling house of the victim and her parents. The parent themselves came out of the house when the victim did not come within a reasonably possible time, in search of daughter and heard her cry coming from the nearby maize field, father saw the accused in torch light who ran away from the spot.

12. Factors laid down in various judgment of Hon'ble the Supreme Court for grant or refusal of bail are as follows:-

"(i) Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of accusations;

(iii) severity of the punishment in the event of a conviction;

(iv) danger of the accused absconding or fleeing, if granted bail;

*(v) character, **behavior, means, position and standing of the accused;***

*(vi) **likelihood of repetition of the offence;***

*(vii) reasonable apprehension of the witnesses being influenced;
and*

(viii) danger of justice being thwarted by grant of bail."

13. The bail applicant is a local resident and competent to adversely affect the witnesses as well as to coerce the victim and her parents, the matter is sensitive as it involves sexual assault and rape with a teenage girl residing in a village where generally the society is also not so protective for a girl as against the sexual offence.

14. Hon'ble the Supreme Court further in the case of *Sudha Singh Vs. The State of Uttar Pradesh & Anr.* reported in *AIR 2021 SC 2149* held as follows:-

"12. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail."

15. Learned counsel for the applicant blamed the statement to be false, but prima facie he seems to have this perception under

scepticism, otherwise the statements of victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence at this stage of hearing on bail prayer where prima facie satisfaction as to establishing the prosecution case is sufficient. The statement of victim and the prosecution case as to the offence of rape is therefore prima facie worthy of credence, corroboration by medical evidence is not necessary.

16. In *Rameshwar Vs. State of Rajasthan, AIR 1952 SC 54*, it is held :-

"On principle the testimony of a victim of sexual assault stands on par with the testimony of an injured witness. Just like the testimony of the injured witness that of the victim of sex offence is entitled to great weight. But unlike the case of physical assault, corroboration in the form of eyewitness account of an independent witness cannot be expected in sex offence, having regard to the very nature of the offence."

17. The argument of learned counsel for the applicant with regard to consensual sexual intercourse does not stand on its own legs, because the statement of victim as to "catching hold of her and dragging into maize field" is not improbable. The physical power of a man in comparison to that of a 18 years old girl is much more for committing such terrible act of abduction for the purpose of rape. The victim was searched by the parents from the voice of her cry coming from the maize field. The statement made to the police to the above effect stood affirmed before the Magistrate also, where the girl was free to admit, if she was consensual in the sex with the accused. The affidavit in support of the bail prayer lack pleading to the effect of any such promiscuous character and nature of the victim. The argument of learned counsel in this regard is not tenable and the applicant very well shown prima facie to have committed the abduction and rape of the victim.

18. Hon'ble The Supreme Court in the case of *Aparna Bhat & Ors. Vs. State of Madhya Pradesh & Anr.* reported in *2021 SCC SC 230* in para 21 held as under:-

"21. Gender violence is most often unseen and is shrouded in a culture of silence. The causes and factors of violence against women include entrenched unequal power equations between men and women that foster violence and its acceptability, aggravated by cultural and social norms, economic dependence, poverty and alcohol consumption, etc. In India, the culprits are often known to the woman; the social and economic "costs" of reporting such crimes are high. General economic dependence on family and

fear of social ostracization act as significant disincentives for women to report any kind of sexual violence, abuse or abhorrent behaviour. Therefore, the actual incidence of violence against women in India is probably much higher than the data suggests, and women may continue to face hostility and have to remain in environments where they are subject to violence. This silence needs to be broken. In doing so, men, perhaps more than women have a duty and role to play in averting and combating violence against women."

19. Looking into the sensitivity of the of matter, possibility of fleeing away of accused-applicant from the process of the court, possibility of adversely affecting the witnesses, prosecutrix, the application is liable to be rejected.

20. Without making comment as to the merit of the case, I find no force in the submission of learned counsel for the bail-applicant and the bail-application is ***rejected*** at this stage.

21. The trial court is therefore directed to record the statements of prosecution witnesses within six months from the date, certified copy is placed before it. However, learned trial court while deciding the case on merit need not to swayed away with the observations made in this order.

Order Date :- 21.6.2021

Gaurav/-

[Vikas Kunvar Srivastav,J.]