

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4824 of 2023

Applicant :- Jeetan Lodh Alias Jitendra

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- Pradyumn Shukla, Qasim Abbas Zaidi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Sri Arvind Mishra has filed his power on behalf of O.P. No.2, complainant which is taken on record.
2. Heard learned counsel for the applicant, learned counsel for the complainant and Sri Rajesh Kumar Singh, learned A.G.A.-I for the State.
3. This bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.225 of 2022 under Section 376, 452, 506 IPC and Section 3/4 of POCSO Act, PS Gangaghat distt. Unnao.
4. Learned counsel for the applicant has submitted that PW-2 prosecutrix has not supported the prosecution case in cross-examination. She has deposed before the Court that she could not identify the person who committed rape against her. She has further stated that she had not seen the face of the person who committed rape. She has further stated that there is no enmity between her family and the applicant. It has been submitted that prosecutrix has totally denied version of FIR as well as the version of 164 CrPC before the Court. Once she has denied the version under Section 164 CrPC and the FIR, at the moment the applicant may not be held guilty and he is liable to be granted bail. He has further submitted that the PW-1 brother who is complainant has also not supported the

prosecution case. The brother has stated that some other person had written FIR and he cannot read Hindi language, therefore, he could not come to know how the FIR was lodged. He has submitted that the applicant has no criminal history and he is in Jail since 20.5.2022.

5. On the other hand, Sri Arvind Mishra learned counsel for the complainant and Sri Rajesh Kumar Singh learned AGA-I have opposed the bail and submitted that version of FIR and statement under Section 164 CrPC are intact and in examination-in-chief, the prosecutrix reiterated the version of FIR as well as statement under Section 164 CrPC, therefore, the bail prayer be rejected.
6. Considering the over all facts and circumstances of the case, particular the cross-examination version of the prosecutrix PW-2, who deposed before the Court that she could not identify the person who committed rape against her and the version of the brother who is complainant, who has also not supported the prosecution case, it is a fit case for bail.
7. Let the applicant Jeetan Lodh @ Jitendra be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) 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 court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) 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 Cr.P.C. 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 against him in accordance with law.

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 in this order.

8. Before parting with the case, Sri Rajesh Kumar Singh learned AGA-I for State has pointed out that in rape cases as well as sexual offence against minor, the victim and her family is provided financial assistance. He has submitted that in the present case, the prosecutrix has become hostile and she has denied the allegation of rape against the applicant. Thus, the compensation amount if any, paid to the victim or her family should be recovered back. He has invited attention of this Court towards Section 33 (8) of the Protection of Children from Sexual Offences Act, 2012 which is quoted below:-

"(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child."

9. Sri Rajesh Kumar Singh learned AGA-I has further invited attention of this Court towards Rule 9 of the Protection of Children from Sexual Offences Rules, 2020 which is quoted below:-

"9. Compensation.—*(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.*

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974) makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

(i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

(ii) the expenditure incurred or likely to be incurred on child's medical treatment for physical or mental health or on both;

(iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

- (v) the relationship of the child to the offender, if any;*
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;*
- (vii) whether the child became pregnant as a result of the offence;*
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;*
- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;*
- (x) any disability suffered by the child as a result of the offence;*
- (xi) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;*
- (xii) any other factor that the Special Court may consider to be relevant.*

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or child's parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government."

10. It has further been submitted by the learned AGA that in compliance of the aforesaid Act and Rules, various Government orders have been issued by the State Government of U.P. i.e., on 9.4.2014,

7.6.2016 and 14.6.2016. The last Government order for paying compensation is issued by the State Government of U.P. on 14.6.2016. The Government order dated 14.6.2016 has been passed whereby the earlier Government order dated 9.4.2014 has been amended for providing compensation to the victim of the categories mentioned in the Government order dated 7.6.2016. The relevant portion of the said Government order dated 14.6.2016 is quoted below:-

- 1), Rs.3,00,000/- for the victim of rape;
- 2) Rs. 1,00,000/- for the victim suffering from loss or injury causing severe mental agony to the victim of the crime (under Section 325, 326, 333, 394, 429, 435 and 436 IPC;
- 3) Rs.5,00,000/- to the victim of corrosive substance i.e, acid attack etc.;
- 4) Rs.1,50,000/- on death (non-earning member).
- 5) Rs.2,00,000/- on death (earning member).
- 6) Rs.2,00,000/- to the victim of human trafficking.
- 7) **For offences under Section 4, 6, 7, 9, 11 and 14 of the Protection of the Children from Sexual Offences Act, 2012:-**

- (a) Rs.2,00,000/- to the victim of penetrative sexual assault (Section 4).
- (b) Rs.2,00,000/- to the victim of aggravated penetrative sexual assault (Section 6).
- (c) Rs.1,00,000/- to the victim of sexual assault (Section 7).
- (d) Rs.1,50,000/- to the victim of aggravated sexual assault (Section 9).
- (e) Rs.1,00,000/- to the victim of sexual harassment (Section 11).

(f) Rs.1,00,000/- to the victim of using child for pornographic purpose (Section 14).

8) Rs.2,00,000/- to the victim of burns affecting greater than 25% of the body (excluding acid attack cases).

9) Rs.50,000/- to the victim of sexual assault (excluding rape).

10) Rs.50,000/- to the victim of loss of foetus.

11) Rs.1,50,000/- to the victim of loss of fertility.

12) Rs.2,00,000/- to the victim of permanent disability (80% or more).

13) Rs.1,00,000/- to the victim of partial disability (40% to 80%).

14 Women victims of cross border firing:-

(a) Rs. 2,00,000/- victim of death or permanent disability (80% or more).

(b) Rs.1,00,000/- to the victim of partial disability (40% to 80%).

11. Now, the question has cropped up before me as to whether, the prosecutrix who has become hostile is entitled to retain the amount of compensation. In my opinion, if the victim has become hostile and does not support the prosecution case at all, it is appropriate to recover the amount if paid to the victim. The victim is the person who comes before the Court and during trial if she denies the allegation of rape and becomes hostile, there is no justification to keep the amount of compensation provided by the State Government. The State Exchequer cannot be burdened like this and there is all possibility of misuse of the laws. Therefore, in my opinion, the amount of compensation given to the victim or the family member, is liable to be recovered by the authorities concerned who have paid the compensation.

12. Therefore, considering the above aspect of the matter, it is directed that the State Government will pass appropriate orders and issue necessary directions to the authorities concerned to recover the amount of compensation if paid, in the cases, where the victim has become hostile during trial and not supported the prosecution. Let necessary exercise be done within a period of three months.
13. The Senior Registrar of this Court is directed to send a copy of this order to the Chief Secretary of Government of Uttar Pradesh for necessary compliance.
14. List this case in the second week of August and learned AGA will submit progress report.

(Brij Raj Singh, J.)

Order Date :- 11.4.2023

Rajneesh JR-PS)