

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 32660 of 2021

**Applicant :-** Shivani Mishra

**Opposite Party :-** State Of U.P And Another

**Counsel for Applicant :-** Ajay Kumar Upadhyay, Ambuj Pandey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ajay Bhanot, J.**

Heard Sri Ambuj Pandey, learned counsel for the applicant and learned AGA for the State.

Sri Ambuj Pandey, learned counsel for the applicant contends that due to a misconception he incorrectly depicted the statement of the victim given under Section 164 Cr.P.C. This necessitated a further hearing.

It is apparent that the Court was misled into passing the bail order on the foot of a false version of the statement under Section 164 Cr.P.C.

Sri Ambuj Pandey, learned counsel for the applicant, brought the correct facts before this Court subsequently.

In the wake of preceding discussion the order dated 29.11.2021 passed in the instant bail application granting bail is recalled.

As per the medical report the victim is a minor and 12 years of age. The victim in her statement under Section 164 Cr.P.C. asserted that the applicant took her away when she was celebrating Holi. They brought her to their room on a motorcycle. They bathed the victim and got her dressed in a saree. Shivani Mishra blindfolded her and took her to a temple. Against her wishes the applicant got one Nitin Mishra to apply sindoor on her head. Certain ceremonies were performed by one Nitin Mishra. When she was consciousness she was given an intoxicating substance. She lost consciousness after consuming the liquid. The said Nitin Mishra forced himself upon her. The

FIR has been registered by the father of the victim. The FIR and statement are consistent.

Considering the nature of the offence and since the victim is a minor, enlarging the said applicant on bail at this stage would influence the trial and will be detrimental to the interests of the minor.

From the instructions received by the learned AGA, it is evident that the directions issued by this Court in Criminal Misc. Bail Application No. 46998 of 2020 (Junaid Vs State of U.P. and another) reported at 2021 (6) ADJ 511 have not been complied with and the protection guaranteed to child victim under the POCSO Act read with Rules have not been provided to the victims in the instant case.

The victim is illiterate and apparently comes from a poor background. The legislature had provided for protection to such class of victims. By denying the aforesaid protection to the victim the State authorities specially Child Welfare Committee has acted in callous and high handed manner.

The Principal Secretary, Department of Women & Child Development, Government of U.P. Lucknow, to take action against the Chairman, Child Welfare Committee of district Pilibhit and file a compliance affidavit before the Registrar General of this Court within a period of one month from today. The Registrar General shall place the affidavit in my chamber.

Even the police authorities have not made full compliance of the directions issued in Junaid (supra), as per the instructions. The Director General of Police, U.P. Lucknow to ensure that appropriate action has been taken as per law and file an affidavit before the Registrar General of this Court.

The bail application of the applicant is rejected.

Learned trial court shall make all endeavours to ensure that the criminal case is decided within a period of one year from the date of receipt of certified copy of the order.

The prosecution agencies as well as accused persons are directed to cooperate in the trial proceedings, to ensure that the trial is concluded within the stipulated period of one year.

**Order Date :-** 14.12.2021

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