

Court No. - 32

WWW.LIVELAW.IN

Case :- BAIL No. - 5999 of 2021

Applicant :- Satish

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Ajeet Kumar Singh,Ravindra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Manish Kumar,J.

1. By means of this bail application, the applicant seeks enlargement on bail in Case Crime No. 237 of 2021, under Sections 363,342,376 of the Indian Penal Code and under Section 3/4 of the POCSO Act, Police Station Pihani, District Hardoi.
2. When the case was taken up on 16.08.2021, the learned counsel for the applicant during the course of argument had drawn attention of this Court to the medical report of the victim to establish that nothing has been come out from the medical report which could support the ocular evidence.
3. The Court is surprised on perusing the medical report that doctor has not written anything relevant in the report but also in the column namely Provisional/Primary Medical Opinion, only the height and weight etc of the victim has been written.
4. This Court vide its order dated 16.08.2021 has directed the appearance of the concerned doctor, who had conducted the medical examination of the victim.
5. Today, Dr. Smita Singh, who has conducted the medical examination of the victim is present in the Court.
6. On being inquired as to why, she did not give any provisional opinion in the Column no. 23 regarding the alleged offence in the FIR , she stated that the opinion could only be given after receiving the supplementary report. For convenience, Column No. 23 filled by the doctor in the present case is being quoted hereunder:-

" 23. Provisional/Primary Medical
Opinion.....

.....154Cm.....52

Kg.14/14....

*Supplementary report follow after
receiving the investigation report. "*

7. Dr. Smita Singh has stated that opinion in Column No. 23 could only be given after receiving the investigation reports, the said contention of Dr. Smita Singh is not acceptable. The provisional/Primary opinion is to be given without waiting for the investigation reports. After the investigation reports, supplementary report is to be followed and that is why column of Provisional/Primary opinion is prior to the supplementary report. The Provisional/Primary opinion is to be given as per the clinical examination of the victim.

8. Learned AGA has drawn the attention of this Court to the Section 164 A (3) Cr.P.C. wherein it has been provided that the report shall state precisely the reasons for each conclusion arrived at. He also produced a copy of the medical report format from the file of some other case where there is a specific column providing to give report as per Section 164 A (2) and (3) Cr.P.C. The Section 164 A Cr.P.C. is being quoted hereunder:-

"[164A. Medical examination of the victim of rape.—(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

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(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:—

- (i) the name and address of the woman and of the person by whom she was brought;
- (ii) the age of the woman;
- (iii) the description of material taken from the person of the woman for DNA profiling;
- (iv) marks of injury, if any, on the person of the woman;
- (v) general mental condition of the woman; and
- (vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of subsection (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf."

9. This Court has noticed that in most of the cases, provisional opinion is always given by the doctors, who have clinically examined the victims. It is for the first time when such flimsy report has come before this Court.

10. Learned AGA also drawn the attention of this Court on the prescribed format on which medical report is to be given, where there is a particular column mentioning therein to give details as per Section 164 A Cr.P.C. which is missing in the prescribed format, which is enclosed in the

present bail application. For ready reference, the column prescribing the relevant details as per Section 164 A (2) of Cr.P.C. is being quoted hereunder :-

<p>8. डी०एन०ए० हेतु अन्य नमूनें—यथा अण्डर गारमेन्टस (अन्तःवस्त्र—पैन्टी, ब्रा आदि) अधोवस्त्र जैवीय पदार्थों (Biological Material) आदि (डी०एन०ए० प्रपत्र संलग्न) दण्ड प्रक्रिया संहिता 1973 की धारा 164 (क) की उप धारा (2) (vi) उचित ब्यौरे सहित अन्य तात्त्विक विशिष्टयाँ</p>	
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11. In view of the above, the Principal Secretary (Medical Health) and Director General (Medical Health) are directed to issue circular to all the Chief Medical Officers of the State of Uttar Pradesh directing the medical officers to strictly comply the provisions of Cr.P.C. and particularly Section 164 A (2) and (3) Cr.P.C. while submitting the medical report and their provisional/primary opinion.

12. It is also directed that the prescribed format shall be uniform for all the districts in the State of Uttar Pradesh.

13. The Senior Registrar of this Court is directed to communicate this order to the Principal Secretary (Medical Health) and Director General (Medical Health) for strict compliance of Section 164 A Cr.P.C.

14. Learned AGA has further submitted that the investigation reports have already come and ten days' time may be granted to submit the supplementary medical report.

15. As prayed by the learned AGA, ten days' time is granted to submit the supplementary medical report.

16. It has also been directed to forward the medical report prepared by Dr. Smita Singh to the competent authority regarding the functioning of the medical officer.

17. The appearance of Dr. Smita Singh is hereby dispensed with.

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18. Let this bail application be listed in the week commencing 06.09.2021.

Order Date :- 24.8.2021

Ashish