

Court No. - 54

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12072 of 2018

Applicant :- Rizwan

Opposite Party :- State Of U.P.

Counsel for Applicant :- Saleem Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

Heard Sri Saleem Ahmad, learned counsel for the applicant, learned AGA and perused the record.

Contention raised at the Bar is that the applicant has been falsely implicated in the present case. It has been further submitted that father-in-law of the victim lodged prompt FIR against the applicant under sections 376 IPC and 3/4 of the POCSO Act. It is further submitted that the victim is an illiterate girl and her age has been determined to be 16 years by the doctor conducting her radiological examination. There is no documentary proof except the aforesaid radiological report of the prosecutrix. In the statement of the victim recorded under section 164 Cr.P.C., on 28.11.2017, she stated that the applicant by putting country made pistol on her temple, committed rape upon her. On raising the alarm, the first informant, who happens to be father of the prosecutrix, came to the site of the occurrence and lodged the instant FIR. Medical examination report reveals

that the prosecutrix sustained no internal or external injury on her person. Her hymen was found old torn and was also opined by the doctor that she was habitual to sex. It is further submitted that the present criminal prosecution came into existence only when the father of the prosecutrix saw the incident. It is further argued that giving two years margin in age of the prosecutrix, as permissible under law, it may be well assumed that the prosecutrix is a consenting party. The applicant is in jail since 08.12.2017, having no criminal antecedents to his credit.

Learned AGA opposed the prayer for bail but could not dispute the aforesaid facts and the legal submissions as argued by the learned counsel for the applicant.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties and without expressing any opinion on merits of the case, I am of the view that the applicant has made out a case for bail.

Let the applicant Rizwan, involved in Case Crime No. 387 of 2017, under sections 376 IPC and 3/4 of the POCSO Act, P.S. Ratanpuri, District Muzaffarnagar be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the

interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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 IPC.

(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., MAY BE ISSUED AND IF 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 IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this court.

Order Date :- 3.4.2018

shailesh