

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10336 of 2022

Applicant :- Rajesh

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Vijay Tripathi, Ajay Pratap Singh, Prem Shankar, Shailja Kant Tripathi, Utkarsh Singh

Counsel for Opposite Party :- G.A., Rajendra Kumar Srivastava

Hon'ble Sanjay Kumar Singh, J.

1. Heard learned counsel for the applicant, learned Additional Government Advocate representing the State and learned counsel appearing on behalf of the first informant.

2. By means of this application, applicant Rajesh, who is involved in Case Crime No. 14 of 2022, under Sections 376AB of I.P.C., & under Section 5m/6 POCSO Act, Police Station Dauki, District Agra, seeks enlargement on bail during the pendency of trial.

3. As per prosecution case in brief, the informant who is mother of the victim lodged a first information report on 14.01.2022 for an alleged offence under Section 376 I.P.C. and Section 3/4 of POCSO Act against the applicant Rajesh making allegations inter-alia that on 14.01.2022 at about 05:50 PM when her daughter aged about 7 years had gone to field, the applicant by alluring her for giving Rs. 10/- bodily lifted her to the mustard field and committed rape on her.

4. The main substratum of argument of learned counsel for applicant is that the applicant has been falsely implicated in this case and that the allegation of the prosecution is not supported by the medical examination report of the victim as no injury was found on her body and her hymen perineum was found intact. Therefore, the applicant who is languishing in jail since 15.01.2022 may be enlarged on bail.

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5. Per contra, learned Additional Government Advocate vehemently opposed the prayer for bail of the applicant by contending that the victim in her statement both under Section 161 and 164 Cr.P.C. has made serious allegation of rape against the applicant. Victim is minor child aged about 7 years, and the offence is heinous in nature, therefore bail application of the applicant is liable to be rejected.

6. Victim in her statement under Section 164 Cr.P.C. has specifically stated that when she had gone to fetch mustard from the field, accused took her to the field in the lap and inserted his penis into his vagina.

7. It is well settled that to constitute an offence of rape complete penetration of penis with emission of semen and the rupture of hymen is not necessary.

8. Modi in his book **Modi Textbook of Medical Jurisprudence and Toxicology, 23rd Edition**, at page 897, opined thus:

"To constitute the offence of rape, it is not necessary that there should be complete of the penis with the emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without the emission of semen, or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the Medical Officer should mention the negative facts in his report, but should not given his opinion that no rape had been committed. "

At page 928: In small children, the hymen is not usually ruptured, but may become red and congested along with the inflammation and bruising of the labia. If considerable violence is used, there is often laceration of the fourchette

and the perineum.

9. In Parikh's Textbook of Medical Jurisprudence and Toxicology, the following passage is found:

"Sexual intercourse: In Law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains."

10. State Of **Himachal Pradesh vs Asha Ram, 2006 Cri.L.J. 139** was a case in which High Court of Himachal Pradesh has acquitted the accused Asha Ram on the ground that no spermatozoa were found on the Salwar and underwear of the prosecutrix though according to the prosecution, complete act of sexual intercourse was committed. Further no evidence has come on record to show that hymen was ruptured. The medical evidence coming on record, as discussed above, is highly unreliable and even otherwise it does not establish that the victim was subjected to sexual intercourse. Hon'ble Supreme while setting aside the judgement of the High Court, has held as under:

"We record our displeasure and dismay, the way the High Court dealt casually with the offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on the minor girls. The High Court was swayed by sheer insensitivity totally oblivious of growing menace of sex violence against the minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling

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reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

11. In the case of **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753**, Hon'ble Supreme Court held thus:

In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered

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essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society and its profile."

12. Hon'ble Supreme Court in **State of A.P. Vs. Bodem Sundara Rao, 1995 (6) SCC 230** has cautioned the Courts while dealing with the cases of sexual crime against women in the following words:

"Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The Courts are, therefore, expected to deal with the cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely."

13. In **Madan Gopal Kakkad vs Naval Dubey And another, 1992 SCR (2) 921**, Hon'ble Supreme Court held:

Before parting with the judgment, with deep concern, we may point out that though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that children are ignorant of the act of rape and are not able to offer resistance and become easy prey for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female

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children and young girls. Therefore, such offenders who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms.

We feel that Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end if the gravity of the offences so demand.

14. It is also not disputed that after investigation charge-sheet have submitted under Section 376AB of I.P.C., in which minimum sentence of 20 years has been provided. Apart from this presumption under Section 29 of the POCSO Act shall also be drawn against the accused-applicant.

15. Though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that children are ignorant of the act of the rape and are not able to offer resistance and become easy prey for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore, such offenders who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms.

16. Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant and severity of punishment, I do not find any good ground to release the applicant on bail.

17. Accordingly, the bail application is **rejected**.

Order Date :- 10.5.2023

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