

AFR

Neutral Citation No. - 2024:AHC:62260

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2322 of 2024

Applicant :- Aman @ Vansh

Opposite Party :- State Of Up And 3 Others

Counsel for Applicant :- Vikash Chandra Tiwari

Counsel for Opposite Party :- Ajay Singh Yadav,G.A.

Hon'ble Ajay Bhanot,J.

Matter is taken up in the revised call.

Shri Paritosh Kumar Malviya, learned AGA-I for the State contends that the police authorities in compliance of 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** and with a view to implement the provisions of POCSO Act, 2012 read with POCSO Rules, 2020, have served the bail application upon the victim/legal guardian as well as upon the CWC.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.419 of 2023 at Police Station-Shalimar Garden, District-Ghaziabad under Sections 363, 376 IPC and Sections 3/4 of POCSO Act. The applicant is in jail since 05.12.2023.

The bail application of the applicant was rejected by the learned trial court on 21.12.2023.

The following arguments made by Shri Vikash Chandra Tiwari, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Ajay Singh

Yadav, learned counsel for the informant and Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. The victim was wrongly shown as a minor of 16 years in the F.I.R. only to falsely implicate the applicant under the stringent provisions of the POCSO Act and cause his imprisonment.

2. The age of the victim set out in the prosecution case is refuted in light of the judgement of this Court in **Monish Vs. State of U.P. and others (Criminal Misc. Bail Application No. 55026 of 2021)** and on the following grounds:

(i) There are material contradictions in the age of the victim as recorded in various prosecution documents.

(ii) The age of the victim was incorrectly got registered in the school records by the victim's parents to give her an advantage in life. There is no lawful basis for the age related entry of the victim in the school records. The school records disclosing her age as 16 years and 10 months are unreliable.

(iii) The victim in her statement under Section 161 Cr.P.C. has stated that she is 15 years of age respectively.

The medical to determine the age of the victim was not drawn up at the time of arrest of the applicant. The medical of the victim was subsequently drawn up on the order passed by this Court on 12.03.2024 in the instant Criminal Misc. Bail Application No.2322 of 2024

(Aman @ Vansh v. State of U.P. and 3 others).

The medical report opines that the age of the victim is about 17 years.

Two submissions are made in regard to the aforesaid medical report. Firstly, the range of error in determining the age is about two years and the same should be read in favour of the applicant at this stage. Secondly, the relevant scientific parameters as per latest medical protocol which would establish the majority of the victim has been excluded from consideration in the medical report. The medical report is flawed. In fact the victim is a major.

3. The incident occurred on 09.11.2023 and the F.I.R. was got registered on 13.11.2023.

4. Delay of 4 days in lodgement of the F.I.R. in the facts of this case is fatal to the prosecution case.

5. The victim and the applicant were intimate.

6. The F.I.R. is the result of opposition of the victim's family to the said relationship with the applicant.

7. The victim in her statements under Section 161 Cr.P.C. and Section 164 Cr.P.C. has admitted to intimacy with the applicant. She has also asserted that she eloped with the applicant to Delhi of her own volition. The victim has lastly asserted that she got married to the applicant.

8. No allegation of commission of rape by the applicant with the victim was made in the F.I.R. or in the statements of the victim under Sections 161 Cr.P.C. and

164 Cr.P.C.

9. The victim was never confined or bound down in any manner. The victim was present at public places. She did not raise an alarm nor did she resist the applicant. Her conduct shows that she was a consenting party.

10. Major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and Section 164 Cr.P.C., as well as the recitals in the F.I.R. discredit the prosecution case.

11. The victim has declined to undergo the medical examination.

12. The applicant does not have any criminal history apart from the instant case.

13. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Aman @ Vansh be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or

influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

The learned trial court is directed to fix the sureties after due application of mind in light of the judgement rendered by this Court in **Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023)**.

The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the applicant.

Before parting some observations have to be made which arise in the facts of this case but also become applicable to large number of matters arising before this Court.

This Court has consistently held that while sitting in the bail determination the High Court is not denuded of its constitutional status. The bail jurisdiction though created under the statute is also a constitutional jurisdiction of first importance since the most precious right of life and liberty are engaged in the process of consideration of bail. Consequently when legal issues which directly impact the life and liberty of a citizen arise during consideration of a bail application, the Court has to squarely deal with this issues.

[See: **1. (Anil Gaur @ Sonu @ Sonu Tomar v. State of U.P.** reported at **2022 SCC Online All 623**) (Criminal Misc. Bail

Application No.16961 of 2022)

2. (Bhanwar Singh @ Karamvir v. State of U.P. reported at 2023 SCC Online All 734) (Criminal Misc. Bail Application No.16871 of 2023)

3. Criminal Misc. Bail Application No.53159 of 2021 (Noor Alam v. State of U.P.).]

In the instant case as in a large number of bail applications under the POCSO Act, issues relating to the age of the victims having serious consequences on the life and liberty of accused persons arise for consideration.

This Court has been finding that in the large number of cases the age of the victim set out in the prosecution case is often at variance with the age determined by the expert medical boards in accordance with the latest medical protocols. At times there are multiple contradictions in age related documents available with the prosecution. Numerous cases of false implication and abuse of POCSO Act have also been noticed. Runaway couples of young age are criminalized in the process. The age determined by the Medical Board has several benefits:-

(a) The said report may prove to be a reliable piece of evidence in the case.

(b) The said medical reports will assist the process of law and enable the courts to make a conclusive finding on the victim's age after considering all evidences in the record.

(c) The said medical reports determining the victim's age

at the very outset will also help prevent misuse of the POCSO Act.

(d) The said medical reports are relatable to specific provisions of law.

The importance of medical reports in the criminal investigation process was recognized by the legislature while incorporating Section 164-A of the Code of Criminal Procedure. The provision is extracted hereunder:

"Section 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.

(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 Sub-Section (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.”

In this context reference to Section 27 of the Protection of Children from Sexual Offences Act, 2012 can also be profitably made in support of the narrative. Section 27 of the POCSO Act reads as under:

“Section 27. Medical examination of a child.-(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973 (2 of 1973).

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.”

Wide ambit of the provision embraces various kinds of medical reports including a medical report determining the victim's age in POCSO Act offences. The provision contemplates that medical reports to determine the age of victims be drawn up by competent professionals from eminent institutions in accordance with the latest scientific parameters and medical protocols. Further the said medical reports have to be presented to the Court at the earliest for assisting the process of law.

False depiction of a victim as a minor in POCSO Act cases is an abuse of the process of court. Complications caused by false depiction of a victim as minor and contradictions in age related documents were also examined by this Court in **Monish Vs. State of U.P. and others (Criminal Misc. Bail Application No. 55026 of 2021)**.

In numerous cases the age determined by the Medical Board contradicted the minority of the victim set up in the prosecution case. Illustrative list of POCSO Act of such cases before this Court where the Medical Board opined that the victim was a major is appended as appendix-I¹.

This Court is finding that in many instances the accused-applicants have argued that medical determination of the victim's age was not got done deliberately as it would establish the majority of the victim and repudiate the prosecution case. By falsely depicting the victim as a minor the accused persons are wrongly implicated under

the stringent regime of the POCSO Act only to cause their indefinite imprisonment. Reference of such cases by way of exemplars is appended as appendix-IIⁱⁱ.

There is a third category of cases. Despite the statutory mandate the medical report to determine the victim's age is not drawn up and made part of investigations in a majority of cases. Absence of medical report determining the age of a victim came in the way of the Court dispensing equal justice. In these cases this Court has developed a practice to call for such reports. An exemplar list of this set of cases is appended as Appendix-IIIⁱⁱⁱ.

Medical Report determining the age of a POCSO Act offence is an imperative requirement of law and an absolute necessity of justice.

In the wake of the preceding discussion the following directions are issued:

1. The police authorities/investigation officers shall ensure that in every POCSO Act offence a medical report determining the victim's age shall be drawn up at the outset under Section 164A of the Criminal Procedure Code read with Section 27 of the Protection of Children from Sexual Offences Act, 2012. The report may be dispensed with if medical opinion advises against it in the interests of the victim's health.
2. The medical report determining the age of the victim shall be created as per established procedure of law and in adherence to latest scientific parameters and medical

protocol.

3. The medical report determining the age of the victim shall be submitted under Section 164-A of the Code of Criminal Procedure to the Court without delay.

4. The Director General (Health), Government of Uttar Pradesh, Lucknow shall also ensure that the doctors who comprise the Medical Board are duly trained and follow the established medical protocol and scientific parameters for determining the age of the victims in such cases. Constant research shall be done in this field to keep the reports in line with the latest scientific developments.

A copy of this order be communicated by the learned Government Advocate to the Director General of Police, Lucknow, Uttar Pradesh for compliance and Director General (Health), Government of Uttar Pradesh, Lucknow.

Order Date :- 16.4.2024
Ashish Tripathi

i **Appendix-I**

1. Criminal Misc. Bail Application No.7172 of 2024 (Balakram Chaurasiya v. State Of UP And 3 Others)
2. Criminal Misc. Bail Application No.42249 of 2023 (Surendra Kumar v. State Of U.P. And 3 Others)
3. Criminal Misc. Bail Application No.39386 of 2023 (Rakesh Yadav Urf Saral v. State Of U.P. And 3 Others)
4. Criminal Misc. Bail Application No.7382 of 2024 (Lakshman @ Laxman v. State Of UP And 3 Others)
5. Criminal Misc. Bail Application No.7957 of 2024(Shiva Vs. State Of U.P. And 3 Others)
6. Criminal Misc. Bail Application No. 403 of 2024(Rahul Kumar vs. State Of Up And 3 Others)
- 7.Criminal Misc. Bail Application No. 7384 of 2024 (Nanhe Alias Rambaran v. State Of Up And 3 Others)
8. Criminal Misc. Bail Application No.5675 of 2024(Dalveer v. State Of UP and 3 Others)
9. Criminal Misc. Bail Application No.6970 of 2024 (Yogendra v. State Of Up 3 Others)
10. Criminal Misc. Bail Application No. 55899 of 2023 (Devendra Singh v. State Of U.P. And 3 Others)
11. Criminal Misc. Bail Application No.807 of 2024(Bunti v. State of U.P.)
12. Criminal Misc. Bail Application No.2039 of 2024(Akhilesh Kumar Yadav v. State Of Up And 3 Others)
13. Criminal Misc. Bail Application No.7328 of 2024(Arun Alias Happy v. State Of UP And 3 Others)
14. Criminal Misc. Bail Application No.7263 of 2024 (Mohammad Kalam v. State Of Up And 3 Others)
15. Criminal Misc. Bail Application No. 6553 of 2024(Vikas v. State Of Up And 3 Others)
16. Criminal Misc. Bail Application No. 6592 of 2024 (Sonu @ Shanu v. State Of Up And 3 Others)
17. Criminal Misc. Bail Application No.6066 of 2024 (Guddu v. State Of UP And 3 Others)
18. Criminal Misc. Bail Application No.12178 of 2024 (Bullet Gupta @ Shivkumar Sah v. State of U.P.
19. Criminal Misc. Bail Application No.2048 of 2024(Bhonu v. State Of UP 3 Others)
20. Criminal Misc. Bail Application No.4577 of 2024 (Pinku v. State of U.P. and 3 others)

ii **Appendix-II**

1. Criminal Misc. Bail Application No. 5180 of 2024 (Chhotu Rajbhar @ Melhu v. State Of UP Others)
2. Criminal Misc. Bail Application No.56492 of 2023 (Sudhir Gautam v. State Of U.P. And 3 Others)
3. Criminal Misc. Bail Application No. 7227 of 2024 (Vikas @ Chhotu v. State Of UP)
4. Criminal Misc. Bail Application No. 26264 of 2023 (Jitendra Kumar v. State Of U.P. And 3 Others)
5. Criminal Misc. Bail Application No.5820 of 2024 (Arun Saini v. State Of UP And 3 Others)

6. Criminal Misc. Bail Application No. 55331 of 2023 (Udai Varma v. State Of U.P. And 3 Others)
7. Criminal Misc. Bail Application No.16086 of 2023 (Kunnu Raidas @ Shishupal v. State Of U.P. And 3 Others)
8. Criminal Misc. Bail Application No.12866 of 2024 (Mahesh Yadav v. State of U.P. and 3 others)
9. Criminal Misc. Bail Application No.932 of 2024 (Monu Chauhan v. State Of UP Others)
10. Criminal Misc. Bail Application No.24294 of 2023 (Shamshad Khan v. State Of U.P. And 3 Others)
11. Criminal Misc. Bail Application No.5926 of 2024(Lucky v. State Of UP And 3 Others)
12. Criminal Misc. Bail Application No.5107 of 2024 (Rajeev @ Rana vs. State Of UP And 3 Others)
13. Criminal Misc. Bail Application No. 4101 of 2024 (Sani S/O Bhaiyalal v. State Of UP Through Principal Secretary Gov Of Up Lucknow)
14. Criminal Misc. Bail Application No.4294 of 2024 (Rajesh v. State Of Up And 3 Others)
15. Criminal Misc. Bail Application No.5472 of 2024 (Lallu v. State Of UP And 3 Others)
16. Criminal Misc. Bail Application No. 7358 of 2024 (Rahul Alias Gandhi v. State Of UP And 3 Others)
17. Criminal Misc. Bail Application No. 6583 of 2024 (Adesh Yadav v. State Of UP And 3 Others)
18. Criminal Misc. Bail Application No. 5959 of 2024 Ravi Kumar v. State Of UP 3 Others)
19. Criminal Misc. Bail Application No. 6022 of 2024 (Vikas v. State Of UP And 3 Others)
20. Criminal Misc. Bail Application No.7679 of 2024 (Faisal Khan @ Nabi Hussain v. State Of U.P. And 3 Others)

iii **Appendix-III**

1. Criminal Misc. Bail Application No.665 of 2024 (Mohan Sahani v. State of U.P. and 3 others)
2. Criminal Misc. Bail Application No.2771 of 2024 (Yogesh v. State of U.P and others)
3. Criminal Misc. Bail Application No.2751 of 2024 (Ashish @ Chini v. State of U.P. 4 others)
4. Criminal Misc. Bail Application No.2618 of 2024 (Yogendra v. State of U.P. and 3 others)
5. Criminal Misc. Bail Application No.2972 of 2024 (Salman v. State of U.P. and others)
6. Criminal Misc. Bail Application No.2990 of 2024 (Sunil v. State of U.P. and 3 others).

Order Date :- 16.4.2024
Ashish Tripathi