

AFR

Reserved on 13.04.2023

Delivered on 21.04.2023

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 833 of 2023

Applicant :- [REDACTED]

Opposite Party :- State of U.P. and others

Counsel for Applicant :- Vijit Saxena, Rakesh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamsbery,J.

1. Applicant-[REDACTED] has approached this Court by way of filing present bail application seeking enlargement on bail in Case Crime No. 860 of 2021, under Sections 354, 376(D)(B), 323, 328, 506, 366A, 120B IPC and 5/6 POCSO Act, Police Station Kotwali Lalitpur, District Lalitpur, after rejection of his bail application vide order dated 07.01.2022 passed by Additional Sessions/Special Judge (POCSO Act), Lalitpur.

2. In the present case an FIR was lodged by victim, a minor girl, aged about 17 years. She has narrated how she suffered sexual ordeal for many years which was commenced, when she was a student of Class-VI. First perpetrator who ravished her was her father (applicant), who not only thereafter repeatedly raped her, but put her in a prostitution racket also.

3. In the FIR, victim has narrated how her father himself presented her before other men, who raped her. Victim also described that even her relatives (uncles) also raped her and women of her family helped them in committing act of rape. Victim and her mother were subjected to sedatives. In all victim, has named 25 accused persons including her father, close relatives, her family friends and other persons and women of her family, who helped in crime. She was not able to disclose earlier about above referred offences since there were repeated threats to cause harm to her mother, younger brother and sister.

4. Sri Vijit Saxena, learned counsel for applicant, submitted that story of victim, on the face of it, appears to be not only concocted but improbable

also. It would be beyond imagination that victim was repeatedly raped by her father, her close relatives and applicant has put her in prostitution and it continued for many years. Victim has never raised any alarm or called police or reported matter before police authorities. Learned counsel further submitted that contents of FIR remained consistent in the statements of victim recorded under Sections 161 and 164 Cr.P.C. as well as statement made before Medical Officer and Members of Child Welfare Committee, however, she has not mentioned a single date in her statements though she was allegedly subjected to rape repeatedly on many days during long duration of atleast 6-7 years.

5. Learned counsel further submitted that except applicant, this Court has granted bail to all other co-accused by different Coordinate Benches. Medical examination has not supported case of victim. Applicant was falsely implicated and reason for false implication is that the mother of victim is interested in family property. Learned counsel further submitted that some of accused persons have approached this Court challenging charge sheet, cognizance order and summoning order by filing respective applications under Section 482 Cr.P.C. and this Court has granted interim protection that no coercive measures shall be taken against applicants therein.

6. Learned counsel also submitted that subsequently mother of victim has lodged an FIR against applicant (her husband) that many years ago she was kidnapped and forced to marry him.

7. Above submissions are opposed by Sri Paritosh Malviya, learned AGA appearing for State. He submitted that a minor girl was subjected to sexual assault by many persons for several years. A conspiracy was hatched to put victim in prostitution. For a minor girl, who has gone through such a traumatic ordeal, it is possible that she may not be able to narrate the date and time of offence but this will not dilute the seriousness of crime. There are other factors also that she was always given sedatives and threat was also given to her that in case of any report damage would be caused to her mother, younger brother and sister. Learned AGA, however, has not disputed that other co-accused have been granted bail however he has submitted that the reasons given in bail orders are not in terms of judgements passed by

Supreme Court in **Manoj Kumar Khokhar vs. State of Rajasthan and Anr. (2022)3 SCC 501** and **Brijmani Devi vs. Pappu Kumar (2022) 4 SCC 497**.

8. During hearing of this case, Court has called Chairperson, Child Welfare Committee, Lalitpur, to get first hand information about victim. Sri Raj Kumar Jain, Chairperson, Child Welfare Committee, Lalitpur has appeared before this Court and stated that victim was given an option for psychological counselling, however, she refused as well as she has refused for support persons also though her statement was recorded. She was provided financial assistance also and presently she is a student of Graduation.

9. Aforesaid exercise was done with the object that on the basis of above referred allegations, which are very serious, victim must have suffered mental trauma for number of years and for that she requires a proper counselling. In the present case it was provided but she has not accepted the request of support person. The documents submitted by Child Welfare Committee include a statement given by victim before Child Welfare Committee, wherein allegations made in FIR, statements recorded under Sections 161 and 164 Cr.P.C. were completely supported, therefore, Court proceed to consider this bail application on premise that victim's version still remain same, despite she now being a major girl.

10. It is not in dispute that number of co-accused have been granted bail and some of accused persons have also approached this Court for quashing of criminal proceedings, wherein interim protection qua to applicants therein have been granted. I have also perused the bail orders passed by Coordinate Benches of this Court whereby co-accused have been granted bail. Though some of the orders appear to be very detail however no reason, as required by judgments passed by Supreme Court in **Manoj Kumar Khokhar (supra)** and **Brijmani Devi (supra)**, has been given. Therefore, plea of parity cannot be accepted and Court proceed to consider this bail application on its own merit.

11. Applicant's relationship with victim is not in dispute that he is the father of victim. According to statement of victim, which remained consistent in FIR and statements under Sections 161 and 164 Cr.P.C., the

first alleged perpetrator was her father (applicant), when she was a student of Class VI and she repeated the offence thereafter also and further that he allegedly put victim to have physical relationship with other persons. The co-accused have allegedly raped her with consent of her father and even she was raped by her close relatives and other persons also. The allegations, therefore, are very serious against applicant as allegedly he has betrayed a pious relationship of father and daughter.

12. Still there is merit in the argument of learned counsel for applicant that narration of prosecution story by victim appears to be exaggerated. Victim has narrated number of incidents of rape by number of persons during a period of many years. However, she was not able to point out a single place of occurrence as well as a single date or month of occurrence. Court is conscious that narration of facts of victim remained consistent in FIR lodged by her and in her statements recorded under Sections 161 and 164 Cr.P.C., however, a factor of improbability also comes into picture, when conduct of victim's mother is considered that she has not make any attempt to protest or lodge any FIR despite she was aware that her daughter was undergoing sexual assault for several years.

13. In addition to above, there is another factor which requires consideration that all the co-accused have been granted bail by this Court against whom very serious allegation of rape was levelled. In these circumstances, Court is inclined to grant bail to applicant also.

14. However, applicant is directed to remain present on each and every date as and when required by Trial Court during trial and in case any application for exemption on vague ground is filed, the same shall be a ground for Trial Court to cancel bail immediately.

15. Let the applicant-**Rajendra Agarwal alias Bablu** 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 concerned with the following conditions which are being imposed in the interest of justice:-

- (i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. 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.

(iii) The applicant will not misuse the liberty of bail in any manner whatsoever. 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 I.P.C.

(iv) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of six months after release of applicant, if there is no other legal impediment.

(v) The applicant will not enter in the area of District Lalitpur for a period of six months from today, except for the purpose of present case with prior information to Trial Court and meanwhile, Trial Court is directed to record statement of victim.

16. The identity, status and residential proof of sureties will be verified by Court concerned and in case of breach of any of the conditions mentioned above, Court concerned will be at liberty to cancel the bail and send the applicant to prison.

17. The bail application is allowed.

18. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

19. Before parting with this judgment, I propose to deal with the duties, responsibilities and statutory status of Child Welfare Committee.

20. Under Chapter III of the Juvenile Justice (Care and Protection of Children) Act, 2000 (*hereinafter referred to as "JJ Act, 2000"*) under the heading of "Child in Need of Care and Protection", concept of Child Welfare Committee was introduced.

21. Section 29 of JJ Act, 2000 describes formation of Child Welfare Committee. Section 30 provides procedure etc. in relation to Committee. Section 31 provides powers of Committee that Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children as well as to provide for their basic needs and protection of human rights. These provisions are almost reiterated in Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as "JJ Act, 2015"*) under Chapter V from Section 27 onwards.

22. In exercise of powers conferred by proviso to sub-section (1) of Section 110 of JJ Act, 2015 State of U.P. has framed Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2019 (*hereinafter referred to as "JJ Rules, 2019"*) which conforms to Model Rules made by Government of India.

23. Rules with regard to Child Welfare Committee are mentioned in Chapter IV of JJ Rules, 2019. Rule 16 provides rules and procedure of Committee and Rule 17 provides additional functions and responsibilities of Committee. Said rules are reproduced hereinafter:

"16. Rules and Procedures of Committee.-(1) The Chairperson and members of the Committee shall be paid such sitting allowance, travel allowance and any other allowance, as the State Government may prescribe but not less than Rs. 1500 (One Thousand and Five Hundred) per sitting.

(2) A visit to an existing Child Care Institution by the Committee shall be considered as a sitting of the Committee.

(3) The Committee shall hold its sittings in the premises of a children's home or at a place in proximity to the children's home or, at a suitable premises in any institution run under the Act for children in need of care and protection.

(4) The Committee shall ensure that no person(s) un-connected with the case remains present in the room when the session is in progress.

(5) The Committee shall ensure that only those person(s), in the presence of whom the child feels comfortable, shall be allowed to remain present during the sitting.

(6) At least one member of the Committee shall always be available or accessible to take cognizance of any matter of emergency and issue necessary directions to the Special Juvenile Police Unit or local police of the district. For this purpose the Chairperson of the Committee shall draw up a monthly duty roster of the Committee members who shall be available and accessible every day, including on Sundays and holidays.

The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Board, the District Child Protection Unit and the Special Juvenile Police Unit.

(7) The Committee shall sit on all working days for a minimum of six hours commensurate with the working hours of a Magistrate Court, unless the case pendency is less in a particular district and the State Government concerned issues an order in this regard:

Provided that the State Government may, by notification in the Official Gazette constitute more than one Committee in a district after giving due consideration to the pendency of the cases, area or terrain of the district, population density or any other consideration.

(8) On receiving information about a child or children in need of care and protection, who cannot be produced before the Committee, the Committee shall reach out to the child or children and hold its sitting at a place that is convenient for such child or children.

(9) While communicating with the child, the Committee members shall use child friendly techniques through their conduct.

(10) The Committee shall hold its sittings in a child-friendly premises which shall not look like a court room in any manner and the sitting arrangement should be such to enable the Committee to interact with the child face to face.

(11) The Committee shall not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Committee and the children.

(12) The Committee shall be provided infrastructure and staff by the State Government.”

“17. Additional Functions and Responsibilities of the Committee.-*In addition to the functions and responsibilities of the Committee under Section 30 of the Act, the Committee shall perform the following functions to achieve the objectives of the Act, namely:*

- (i) document and maintain detailed case record along with a case summary of every case dealt by the Committee in Form 15;*
- (ii) maintain a suggestion box or grievance redressal box at a prominent place in the premises of the Committee to encourage inputs from children and adults alike which shall be operated by the District Magistrate or his nominee;*
- (iii) ensure smooth functioning of Children's Committees in the Child Care Institutions for children in need of care and protection within its jurisdiction, for realising children's participation in the affairs and management of the said Child Care Institutions;*
- (iv) review the Children's Suggestion Book at least once a month;*
- (v) send quarterly information in Form 16 about children in need of care and protection received by it to the District Magistrate with all relevant details on nature of disposal of cases, pending cases and reasons for such pendency;*
- (vi) wherever required, issue rehabilitation card in Form 14 to children in need of care and protection to monitor their progress;*
- (vii) maintain the following records in a register:*
 - (a) entries of the cases listed in a day and next date and the Committee shall prepare a daily cause list of the cases before it;*
 - (b) entries and particulars of children brought before the Committee and details of the Child Care Institution where the children are placed or the address where the children are sent;*
 - (c) execution of bonds;*

- (d) movement including visits to institutions;*
- (e) children declared legally free for adoption;*
- (f) children recommended for or placed in sponsorship;*
- (g) children placed in individual or group foster care;*
- (h) children transferred to or received from another Committee;*
- (i) children for whom follow up is to be done;*
- (j) children placed in aftercare;*
- (k) inspection record of the Committee;*
- (l) record of Minutes of the meetings of the Committee;*
- (m) correspondence received and sent;*
- (n) any other record or register which the Committee may require.*

(viii) all information listed in clause (vii) of this rule may be digitized and a software may be developed by the State Government.”

24. Later on there were certain amendments w.e.f. 01.09.2022 in Rule 15 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016, which still to be incorporated in in JJ Rules, 2019.

25. The above referred procedure of Committee and additional functions and responsibilities of Committee entrusted a great responsibility to Child Welfare Committee that it shall hold its sittings in the premises of a children’s home or, at a place in proximity of children’s home or, at a suitable premises in any institution run under the Act for children in need of care and protection. It further provides that it shall be ensured that no person or persons unconnected with case remains present in room when session is in progress and only those persons shall be allowed to remain present, in presence of whom child feels comfortable. Committee shall hold its sittings in a child friendly premises which shall not look like a Court Room in any manner. Committee has to review the Children’s Suggestion Book atleast once in a month.

26. Concept of Child Welfare Committee has important factor in implementation of JJ Act, 2015 and JJ Rules, 2019. In the present case considering gravity of allegations, victim does require a very special and effective counselling by an experienced counsellor.

27. In the backdrop of above referred statutory provisions it is clear that Child Welfare Committee has a great responsibility when it is dealing with a case of minor girl victim, as the case in hand, who has suffered mental and physical trauma of repeated assault for many years. In such cases it would not be a mere formality of Child Welfare Committee to comply with above referred statutory provisions but it would require more cautious approach. In such cases victim should be dealt with extra care and responsibility and for that members of Child Welfare Committee required a trained support system, who can undertake counselling of such victims keeping in view their sufferings.

28. National Commission for Protection of Child Rights (NCPCR) has launched a training module for Child Welfare Committee. The module will be more beneficiary if it includes a requisite training to deal with minor victims of sexual assault.

29. Effect of act/ offence of rape is not momentary but it got pasted on mind, heart, body and soul of the victim and the object of Child Welfare Committee is to undertake such endeavours to erase such memories by counselling and it should be done by well trained counsellors who have experience of treating such minor victims under proper guidance.

30. In view of above, Ministry of Women and Child Development, Government of U.P., Lucknow through its Secretary is directed to ponder on above referred issue by initiating process of interaction with all stakeholders in order to make Child Welfare Committee and its Members more competent, more responsible, more generous and more compassionate to deal with such cases, as the case in hand.

31. While undertaking above exercise it shall also take note the provisions of Rule 35 of JJ Rules, 2019 which provides mental health for children at Child Care Institution. Sub-rule (5) thereof provides that every Institution shall have the services of trained counsellors or collaboration with external agencies such as child guidance centres, psychology and psychiatric departments or similar Government and non-Governmental agencies, for specialized and regular individual therapy for child.

32. The object of above exercise is to provide sincere and appropriate counselling to minor victim and exercise shall not be limited to above observations. It is up to the senior officers of Department to come up with a concrete plan in order to achieve the above referred observations of this Court.

33. Registrar (Compliance) is directed to send a copy of this order to Secretary, Ministry of Women and Child Development, Government of U.P., Lucknow who shall undertake above exercise and submit report thereof before this Court.

34. List this matter after six months before appropriate Bench only for perusal of report submitted by Secretary, Ministry of Women and Child Development, Government of U.P., Lucknow.

Order Date :-21.04.2023

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