

Case :- BAIL No. - 9189 of 2019

Applicant :- Ankit Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Farooq Ayoob, J.B. Singh, Neelam Singh, Vivek Chandra

Counsel for Opposite Party :- G.A., Prabhat Kumar

Hon'ble Abdul Moin, J.

Heard learned counsel for the applicant and learned Additional Government Advocate for the State.

Instant bail application arises out of a first information report dated 05.07.2019 registered at Case Crime No. 0239 of 2019 under Sections 3 and 4 of the Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'Act of 2012'), Police Station Tikait Nagar, District Barabanki. As per the allegations made in the first information report, it comes out that the applicant has been charged of raping a minor girl aged 14 years on 30.06.2019. It is further alleged that when the mother Smt. Lajjawati tried to lodge the first information report, she was prevented from doing so by few persons on the ground of entering into a compromise to which she did not agree too and thereafter the first information report was lodged on 05.07.2019.

Learned counsel for the applicant submits that the entire incident is false. He has placed reliance on medical report of the girl conducted on 05.07.2019, a copy of which is Annexure-5 to the bail application, from which it would be apparent that no injury has been found upon the victim.

Learned counsel for the applicant further submits that the family of the victim is in the practice of initially lodging a first information report and thereafter entering into a compromise with the accused persons. In this regard, learned counsel for the applicant has invited the attention of the Court towards a first information report dated 05.01.2019, a copy of which is Annexure-6 to the bail application, which was lodged by the mother of the victim namely Smt. Lajjawati under Sections 147, 148, 376, 323, 504, 506, 427 and 395 IPC, Police Station Tikait Nagar, District Barabanki, against certain persons. Subsequent thereto, Smt. Lajjawati not pressed the charges against the accused persons which would be apparent from perusal of the order dated 17.07.2019 passed by the trial court, a copy of which is Annexure-7 to the bail application. It is thus contended

that taking into consideration the aforesaid previous conduct of the victim's mother and lack of injury in the medical report of the victim, it is apparent that no such incident had ever occurred and thus the applicant is entitled for bail.

On the other hand, learned AGA has supported the prosecution version. He also takes an objection that Section 40 of the Act of 2012 gives a right to the family or guardian of the child to be entitled to the assistance of a legal counsel for any offence under this Act. He thus submits that the case should not be heard in the absence of the learned counsel appearing for the family of the child.

Having heard learned counsel for the parties and having perused the record, so far as the objection taken by learned AGA is concerned of Section 40 of the Act of 2012, it clearly comes out from perusal of the order sheet that Sri Prabhat Kumar, Advocate, had filed Vakalatnama on behalf of the complainant on 25.02.2020. When the case was listed on 11.06.2020, this Court had directed the Registry to inform the learned counsel for the informant with regard to fixing of the case on 19.06.2020. Today, when the case has been taken up even in the revised call, Sri Prabhat Kumar, learned counsel for the complainant/informant, is not present and neither there is any request for adjournment of the case. In this view of the matter once the provisions of Section 40 of the Act of 2012 stand fulfilled yet at the same time learned counsel appearing for the complainant/informant is not present, the Court has no option but to proceed with the matter. Accordingly, the objection raised by learned AGA is rejected.

On the bail application it is found that the medical report of the child does not indicate anything about injury having been sustained by the child. Further the conduct of the mother of the victim in another case resiling from the charges after lodging of the first information report all prima facie make out a case for grant of bail. Accordingly, the bail application is allowed.

Let applicant **Ankit Gupta** involved in aforesaid case crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

- i. The applicant shall not tamper with the prosecution evidence.
- ii. The applicant shall not threaten or harass the prosecution witnesses.
- iii. The applicant shall file an undertaking to the effect that he

shall not seek any adjournment on the dates 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.

iv. The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

v. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case (ii) framing of charge and (iii) recording of statement under Section 313 CrPC (iv) argument / judgment.

vi. 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.

(vii) Since the certified copy of this order, in view of the COVID-2019 pandemic, may not be easily available to the applicant, the applicant may file computer generated copy of this order from the official website of this Court and self-attested by the learned counsel for the applicant, before the concerned Magistrate/Court/Authority/Official.

(viii) The concerned Magistrate/ Court/ Authority/ Official, before accepting such computerized copy, filed by the applicant, as genuine, shall verify its authenticity from the official website of this Court and proceed further in view of the direction issued by a Division Bench of this Court vide order dated 06.4.2020, passed in Suo-Motu PIL No.564 of 2020 which reads as under :-

"To meet the eventualities occurred as a consequence to lockdown due to the threat of Novel Corona Virus (COVID-19), we issued certain directions under an order dated 26th March, 2020. In continuation of the directions aforesaid it is further directed that:-

(i)

(ii) It is brought to our notice that before enforcement of the lockdown different courts in the State of Uttar Pradesh including the High Court have granted orders to release the accused-applicants on bail but they have not been released so far due to non-availability of sureties.

Looking to impediments in arranging sureties because of lockdown, while invoking powers under Article 226 and 227 of

the Constitution of India, we deem it appropriate to order that all the accused-applicants whose bail applications came to be allowed on or after 15th March, 2020 but have not been released due to non-availability of sureties as a consequence to lockdown may be released on executing personal bond as ordered by the Court or to the satisfaction of the jail authorities where such accused is imprisoned, provided the accused-applicants undertakes to furnish required sureties within a period of one month from the date of his/her actual release.

The order be published in the official website of this Court. A soft-copy of this order shall be sent to all concerned Courts and Tribunals; the learned Advocate General; the learned Additional Solicitor General of India; the learned Assistant Solicitor General of India; State Public Prosecutor and the Chairman of Bar Council of Uttar Pradesh."

(ix) Office is also directed to send a computerized copy of this order to the District Judge concerned through e-mail or the fax, as the case may be, forthwith.

It is provided that none of the observations made above shall be considered by the trial court and the trial shall proceed on its own merits.

Order Date :- 19.6.2020

SK/-