

**Court No. - 83**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 24751 of 2020

**Applicant :-** Shan @ Sonu

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Manoj Kumar Singh, Yogendra Nath Shukla

**Counsel for Opposite Party :-** G.A., Abhishek Kumar Shukla

**Hon'ble Saurabh Shyam Shamsbery, J.**

1. Heard learned counsel for the applicant through Video Conferencing and learned A.G.A. for State.
2. Applicant-Shan alias Sonu, has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. after rejection of his Bail Application vide order dated 01.07.2020, passed by Special Judge (POCSO Act), Court No. 1, Gautambudh Nagar, in Case Crime No.300 of 2020 under Sections 376, 328, 506, 120B IPC, 3/4 POCSO Act, 3(2)(V) SC/ST Act, 67A Information Technology Act, Police Station Phase-2 NOIDA, District Gautambudh Nagar.
3. Applicant and co-accused are allegedly involved in committing repeated rape of victim, a minor girl, by putting her under threat of posting her unsolicited video and photographs on various platforms of social media.
4. Learned counsel for applicant submitted that the applicant is innocent and he has been falsely implicated in the present case. Victim has not attributed role of committing rape on applicant in her statement recorded under Section 164 Cr.P.C. The only role attributed to applicant was to brought a cold drink. No photographs or videos of victim were found in alleged recovered mobile of the applicant. The case of applicant is distinguishable from co-accused, Chand, who allegedly committed rape on the victim. Lastly, it is submitted that applicant has no criminal history, as declared in para 20 of the

application and is languishing in jail since 27.05.2020 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

5. Opposing the bail learned A.G.A. appearing for State submits that in the present case victim is a minor girl, who has specifically stated in her statement that she was raped and present applicant not only brought an adulterated cold drink but also recorded the incident of rape. The victim had also given her unsolicited photographs to the Investigating Officer. It is a case where victim was repeatedly raped and applicant has also specific role of taking video and photographs of act of rape and posting the same in various platforms of social media.

6. Law on bail is well settled that 'Bail is rule a and Jail is an exception'. Bail should not be granted or rejected in a mechanical manner as it concerns liberty of a person. At the time of considering an application for bail, the Court must take into account certain factors such as existence of a prima facie case against the accused, gravity of the allegations, severity of punishment, position and status of the accused, likelihood of the accused fleeing from justice and repeating the offence, reasonable apprehension of tampering with the witnesses and obstructing the Courts as well as criminal antecedents of the accused.

7. It is also well settled that the Court while considering an application for bail must not go into deep merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered.

8. It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised

judiciously and in a humane manner, compassionately and not in whimsical manner.

9. The Court should record the reasons which have weighed with the court for the exercise of its discretionary power for an order granting or rejecting bail. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

10. The Court while granting bail in the case involving sexual offence against a woman should not mandate such bail conditions, which is/are against the mandate of "fair justice" to victim such as to make any form of compromise or marriage with the accused etc. and shall take into consideration the directions passed by Supreme Court in **Aparna Bhat and others vs. State of Madhya Pradesh and another, 2021 SCC Online SC 230**, in this regard.

11. In the present case the victim is a minor girl who has narrated the incident in her statements that applicant brought adulterated cold drink and alongwith co-accused forced her to drink and thereafter she was raped. On gaining consciousness the victim found that applicant has made a video clip and taken photographs of the act and later on it was also posted on various platforms of social media. Prima facie the applicant has actively participated in the offence and conspired with co-accused to commit the offence. There are serious allegations against applicant. Considering that in case of bail there is likelihood that applicant would influence the victim, no case of bail is made out.

12. The bail application is accordingly rejected.

**Order Date :- 21.6.2021**

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