

Court No. - 1

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38196 of 2020

Applicant :- Kamil

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

Counsel for Applicant :- Mohammad Rizwan Ali, Shakeel Ahmad Azmi

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Agarwal, J.

1. Heard Sri Shakeel Ahmad Azmi, learned counsel for applicant-Kamil and Sri Vikas Goswami, learned AGA for the State.

2. This regular bail application filed under Section 439 Cr.P.C. has been filed by the applicant-Kamil being aggrieved of order dated 10.09.2020 passed by learned Special Judge, POCSO Act, Allahabad, rejecting bail application no. 1199 of 2020.

3. Learned counsel for applicant submits that prosecutrix is major. She has filed an application to the effect that she is willing to marry the accused. Placing reliance on such documents, it is submitted that since prosecutrix is willing to marry the applicant, it is a good case for enlarging the applicant on bail. It is also submitted that prima facie, it appears to be a case of consent especially, once it come on record that prosecutrix, as per the medical determination of age, was 18 years of age at the time of the incident.

4. Learned AGA, in his turn, submits that prosecutrix has not supported the case of the applicant. It is submitted that incident took place on 29.02.2020. FIR was lodged on the same day. It is further submitted that in her statement under Section 164 Cr.P.C., she has supported the prosecution version. It is further submitted that in the light of the law laid down in case of ***Gold Quest International Private Limited vs. State of Tamil Nadu and Others; (2014) 15 SCC 235***, such heinous crime as under Section 376 IPC, cannot be compounded or proceedings, cannot be quashed merely because prosecutrix decides to marry the accused. In fact, it has also come in the order-sheet dated 06.04.2021 that though victim has stated that she wants to marry the applicant, but the affidavit filed in this regard only contains thumb impression of victim and does not contain a reciprocal sentiments of the accused.

5. Notwithstanding the sentiments of the victim, as has been

held by Supreme Court in case of *Aparna Bhat and Others vs. State of M.P. and Anothers; 2021 CRI. L. J. 2281*, this Court is estopped from taking cognizance of any such compromise once the statements of the victim are read, as recorded under Section 164 Cr.P.C. before the Magistrate and therefore, bail application fails and is **dismissed**.

6. At this stage, Sri Shakeel Ahmad Azmi, submits that applicant himself is willing to marry the prosecutrix. This Court cannot take cognizance of such statements while considering bail application.

Order Date :- 29.6.2021

Vikram/-