

**Neutral Citation No. - 2024:AHC-LKO:68414**

**Court No. - 12**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 10072 of 2024

**Applicant :-** Moid Ahmad

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

**Counsel for Applicant :-** Ripu Daman Shahi, Saurabh Singh

**Counsel for Opposite Party :-** G.A., K. K. Singh

**Hon'ble Pankaj Bhatia,J.**

1. Heard Sri Ripu Daman Shahi assisted by Sri Saurabh Singh, the counsel for the applicant, Sri Vinod Kumar Sahi learned Additional Advocate General assisted by Dr. V. K. Singh, Government Advocate, Sri Anurag Verma and Sri Bhanu Pratap Singh the counsel for the State as well as Sri K. K. Singh the counsel for the informant.
2. The present bail application has been filed seeking enlargement on bail of the applicant in FIR/Case Crime No.0262 of 2024 lodged on 29.07.2024 under sections 376-DA, 506 IPC read with section 5g(j)(ii)(l)/6 POCSO Act, P.S. Pura Kalandar, District Ayodhya.
3. The counsel for the applicant draws my attention to the FIR, which was lodged alleging that the daughter of the informant aged about 12 years had gone to work on the agricultural fields around two and a half months ago when the co-accused Raju aged about 20 years, who used to work in the Bakery run by the present applicant, came to her and asked her to come to the applicant who had called her and when the victim reached the Bakery, the applicant who was present caught her and formed physical relations with her against her consent. It was stated that while physical relations were being formed, the co-accused made a video on the telephone of the applicant and thereafter, he also committed wrong on the daughter of the informant. It was also stated that thereafter threats were issued that in case she informed anyone, harm would be committed on her and video would be made viral. It was further stated that on the threat of making the video viral and blackmailing the daughter of the informant, on various occasions physical relations were formed against her consent, which resulted in

the victim becoming pregnant. It was further stated that on account of society pressure, she did not inform anyone and one day when she felt unwell and was taken to the doctor, it was revealed that she was carrying a fetus of two months.

4. Based upon the said allegations, the statement of the victim was recorded under section 161 Cr.P.C., wherein, the victim virtually reiterated the said version as was contained in the FIR. She also stated that the co-accused used to work in the shop of the applicant where the victim met him. It was also stated that the co-accused used to talk to her on telephone and used to call in the Bakery. It was also stated that whenever the victim went to the Bakery, both the accused used to administer some foodstuff because of which she would become unconscious and thereafter wrong was committed on her. It was stated that although she was pregnant, she was directed not to speak. She also stated that on one day, the co-accused called her on telephone to the Bakery to give certain Bakery products and when she went there, both of them administered something to her and she slept and when the mother of the victim came to the Bakery, she saw the victim in a bad physical condition and was also bleeding and brought her back. It is stated that then she had informed her mother that both the co-accused used to commit wrong on her and on account of fear, she did not inform anyone and when her periods stopped, the mother became suspicious and thereafter she was taken to the hospital where she was found to be pregnant. She also stated that when the mother of the victim went to meet both the accused, both of them promised that they would help in abortion.
5. Subsequently, the victim's statement was recorded under section 183 BNSS on 31.07.2024, as is evident from the case diary wherein, the victim stated that around two and a half months ago at about 5.00 pm when she was returning from the agricultural fields, the co-

accused Raju as well as one Mohit took her to the Bakery and thereafter both of them committed wrong and also stated that in case she informed her mother, she would be beaten. She also stated that around one and a half months after the incident when she felt pain, she informed her mother.

6. Subsequently, from the case-diary, it appears that the statement of the victim was once again recorded under section 183 of BNSS on 12.08.2024 after getting permission from the trial court wherein she made a statement that earlier she had taken the name of one Mohit, however, wrong was committed on her by the applicant as well the co-accused. She also disclosed that the applicant was aged about 72-75 years. She also stated that she was pregnant and her mother had taken her to Lucknow and, the child was aborted. She also stated that around two and a half months ago, the applicant and the other co-accused had administered certain medicines to her. She also stated that one of the co-accused was fat and the other co-accused was a boy aged about 20 years. She also stated that she could identify both the accused, if so produced before her. She also stated that when asked that earlier she had disclosed the name of Mohit, on investigation no Bakery in the name and style of Mohit was existing. She specifically stated that the name of the applicant was taken in relation to the Bakery. Based upon the said statement, the State intends to prosecute the applicant.
7. The submission of the counsel for the applicant is that is that the applicant is aged about 71 years and considering his age, the allegation of commission of rape, is not medically possible. He further argues that it has been specifically pleaded in para 16 of the bail application, that the mobile phone allegedly used for blackmailing the prosecutrix has not been discovered nor is there any indication of video recording having been deleted from the telephone, which according to the counsel for the applicant raises

suspicion on the prosecution story. He further argues that no time and date of the incident was mentioned in the FIR nor even in the statement, which itself make the entire prosecution story suspicious. He lastly argues that on the basis of the pleadings contained in para 20 that the applicant is Nagar Adhyaksha and belongs to a political party and is being falsely implicated based upon the evidence which cannot be substantiated and thus, the applicant according to the counsel for the applicant, is a victim of political conspiracy. As regards the criminal antecedents, he argues that the same has been disclosed in para 13 which are as under and the applicant is on bail in all the cases except a case crime no.260 of 2023 in which the applicant has never received any notice or summons :

- i. Case Crime no.684 of 2012 under sections 147, 148, 149, and 506 IPC, P.S. Pura Kalandar.
  - ii. Case Crime No.68 of 2013 under section 3/4 UP Control of Goondas Act, P.S. Pura Kalandar.
  - iii. Case Crime No.395 of 2014 under sections 110(g) IPC, P.S. Pura Kalandar.
  - iv. Case Crime No.260 of 2023 under sections 147, 323, 325, 504 & 506 IPC, P. S. Pura Kalandar.
8. The counsel for the applicant places reliance on the order passed in Criminal Misc. Bail Application No.30659 of 2023 wherein the Coordinate Bench of this Court while dealing with the bail application decided the same vide order dated 16.08.2023 and made the following observations in para 13 and 14 of the said order, which read as under :

*13. Although present matter appears to be a case of gang rape and as per allegation, applicant and other co-accused persons committed rape with the prosecutrix, who is about 17 years old but from the perusal of the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. it appears that applicant committed rape with her on the basis of her indecent photographs which he was having but during investigation no such photographs of the prosecution could be recovered.*

*14. Further, from the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. it appears that the date of alleged commission of rape by applicant has not been even mentioned in either of the statements.*

9. Learned Additional Advocate General assisted by Sri Anurag Verma the counsel for the State denies the submissions made by the counsel for the applicant and argues that the bail application deserves to be rejected. The first submission is that in the FIR as well as in the two statements, the victim has specifically named the applicant. He further argues that the submission of the counsel for the applicant that he is the victim of political conspiracy does not merit acceptance as the FIR was lodged after the incident had taken place and on account of the fact that the victim was minor and on account of the society pressure, she could not inform her mother, as such, according to him, the delay in lodging the FIR would not be fatal. He further argues that the FSL Report handed over across the Bar, substantiates the paternity of the child aborted with that of the co-accused. He thus, argues that the medical report and the FSL Report clearly corroborates that the incident which happened and considering the mandate of scope of Section 376-DA, the applicant was clearly involved in the incident and thus, the first submission of the counsel for the applicant, according to him, merits rejection. He further argues that the applicant is politically connected person and considering the fact that the victim is from a very poor section of the society, there is all likelihood of the victim being threatened or the applicant using the clout to adversely effect the course of trial. Reliance is also placed upon a judgment of the Supreme Court in the case of **Bhagwan Singh vs. Dilip Kumar @ Deepu alias Deepak; AIR 2023 SC 4165** wherein the Supreme Court while dealing with the bail cancellation application had observed in paras 17, 26 and 27 which are to the following effect :

*"17. The offence alleged in the instant case is heinous and would be a onslaught on the dignity of the womanhood and the age old principle of यत्र नार्यस्तु पूज्यन्ते तत्र देवता: (where women are respected Gods live there) would recede to the background and the guilty not being punished by process of law or accused persons are allowed to move around freely in the society or in spite of there being prima facie material being present they are allowed to move around freely in the society before guilt is proved and are likely to indulge in either threatening the prosecution witnesses or inducing them in any manner to jettison the criminal justice system, then the superior court will have to necessarily step in to undo the damage occasioned due to erroneous orders being passed by courts below.*

*26. The Courts have placed the liberty of an individual at a high pedestal and extended the protection to such rights whenever and wherever required. In the same breadth, it requires to be noticed that emphasis has also been laid on furnishing reasons for granting while balancing it with the requirement of a fair trial bail even though such reasoning may be brief.*

*27. In the aforesaid circumstances, we notice that the impugned order granting bail is not only bereft of material particulars which would justify grant of bail, but it seems that the High Court has got swayed on the ground of delay and the video having not been recovered during the course of investigation and has given a complete go by to the allegation made in the FIR and statement recorded under Sections 161 and 164 of the Cr.P.C. as also the testimony of the prosecutrix before the jurisdictional court."*

10. He thus, argues that considering the clout which the applicant wields on account of his political connections, the bail application should be rejected.

11. It is necessary to note that the FSL report was handed over across the Bar, which has been taken on record and is read as a part of the record. The case diary was also shown across the Bar and recordings herein above with regard to the statement under section 180 and 183 BNSS are from the perusal of the case diary. It is also informed at the Bar by the learned Additional Advocate General that

the statement of the victim required to be recorded under section 35(1) of the POCSO Act, has not been recorded. He also argues that even if the FSL Report, implicates the co-accused by virtue of mandate of section 35 of IPC, the applicant would be equally guilty. Reliance is place upon the judgment of the Supreme Court in the case of **Bhupinder Sharma v. State of Himachal Pradesh; (2003) 8 SCC 551** wherein in para 14, the following has been observed :

*"In cases of gang rape the proof of completed act of rape by each accused on the victim is not required. The statutory intention in introducing Explanation (1) in relation to Section 376(2)(g) appears to have been done with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC. (See Pramod Mahto and others vs. The State of Bihar 1989 AIR(SC) 1475)"*

12. From the case diary, it is further transpired that the mobile phone allegedly used for recording was recovered by the police authorities, in the presence of two persons, the said fard/part of case diary is taken on record. The mobile so recovered was sent for the FSL analysis, however, the report has not come so far.
13. Based upon these arguments, it is argued by the learned Additional Advocate General that the bail application deserves to be rejected.
14. The counsel for the informant also strongly opposes the bail application and argues that non-mention of the place and time would not be fatal in the FIR considering the nature of the offence. He further argues that while dealing with the bail application in the case of POCSO, it is also essential to notice the mandate of section 29 of the POCSO Act, which prescribes for presumption pertaining to the offences under section 3, 5, 7 and 9 of the said Act. He places reliance on the judgment of the Supreme Court in the case of **State**

**of Bihar vs. Rajballav Prasad @ Rajballav Prasad Yadav @ Rajballabh Yadav; 2017 (2) SCC 178** and placed reliance on the following observations :

*"The High Court also ignored another vital aspect, namely, while rejecting the bail application of co-accused, the High Court had ordered expeditious, nay, day-to-day trial to ensure that the trial comes to an end most expeditiously. When order had already been passed to fast-track the trial, and the application for bail by co-accused Sandeep Suman @ Pushpanjay was also rejected, the High Court, while considering the bail application of the respondent, was supposed to take into consideration this material fact as well. Further, while making a general statement of law that the accused is innocent, till proved guilty, the provisions of Section 29 of POCSO Act have not been taken into consideration, which reads follows:*

*"29. Presumption as to certain offence: Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved." Keeping in view all the aforesaid considerations in mind, we are of the opinion that it was not a fit case for grant of bail to the respondent at this stage and grave error is committed by the High Court in this behalf. We would like to reproduce following discussion from the judgment in the case of Kanwar Singh Meena vs. State of Rajasthan and another.*

15. He further argues that in the present case, as per the charge-sheet, there are as many as 24 witnesses, out of which there are 7 fact witnesses and considering the political status of the applicant, there is all likelihood of the trial may get adversely affected, if the applicant is enlarged on bail. He further, based upon the extract as recorded in the jurisprudence of Modi, argues that the argument of the counsel for the applicant is that the applicant is aged about 71 years, is ill-founded as, there is no bar or presumption that the person with that age is incapable of committing the offence.



Following is relevant to be quoted as argued by the counsel for the informant :

*"As age advances the power of sexual intercourse and procreation diminishes, but no limit can be assigned even legally at which this power ceases, as men of eighty years and over have been known to have begotten children.*

*In October 1924, Modi referred a case to Dr. Mukherji where he found spermatozoa in a man of about ninety years of age. Seymour and others report a case in which a man aged 94, had a child by his wife, aged 27 years. His seminal fluid contained motile spermatozoa of normal conformation and of average size. Male fertility is reduced clinically when (i) the total sperm count falls below 60 million (normal or mean -200 million per ejaculation of 2-4 ml.), (ii) more than 20% of the sperms have abnormal heads or (iii) the motility of the sperms in a fresh specimen of semen is impaired."*

16. The counsel for the informant further argues that during the pendency of the investigation, threats were issued to the family of the informant for which an FIR has already been lodged being FIR No.0430 of 2024 under sections 333, 351(3) BNS on 02.08.2024.
17. Based upon the said submissions, he thus, concludes his submission by arguing that the bail application deserves to be rejected and should be rejected accordingly.
18. Considering the arguments as raised across the Bar, in the present case, prima-facie in terms of the FIR, allegations were levelled that both the co-accused had committed wrong on the daughter of the informant aged about 12 years and a video recording was also made; the allegations are that the physical relations were formed on multiple occasions with the victim aged about 12 years; in the statement under section 161 as well as in the second statement under section 164, which was recorded after obtaining permission from the trial court, prima-facie, allegations of wrong were levelled against both the accused; the FSL report on record although

confirms the paternity of the fetus with the co-accused and not with the applicant, however considering the mandate of section 3 of the POCSO Act as well as the definition of rape as defined under section 375 IPC, one of the tests is that of paternity, the same alone is not conclusive with regard to the offence being committed or not. The specific allegations have been levelled by the victim, the documents on record also demonstrates that the applicant, has a politically clout and taking into account the fact that during the investigation, pressure was exercised for compromise for which an FIR was lodged and taking into account the huge variance in the social and the financial status of the applicant and the victim, at present there is reasonable material to form a view that the applicant if enlarged on bail at this stage can adversely affect the trial, as such, the bail merits rejection at this stage and is accordingly **rejected.**

19. From the material on record and the statement made, it transpires that in terms of the mandate of Section 35(1) of the POCSO Act, the statement of the victim should be recorded within a period of thirty days by the special court taking cognizance, however, no such statement has been recorded so far, as such, I deem it appropriate to direct that the statement of the victim shall be recorded positively within a period of thirty days from today.
20. It is further directed that the statement of the informant shall also be recorded positively within a period of one month from today without giving any unnecessary adjournments to either of the parties, if possible, on day today basis by the trial court.
21. The Superintendent of Police, Ayodhya will personally supervise and ensure that the victim and the informant are produced before the trial court for recording of their testimony, in a safe and secure manner.

22. It is further directed that the Director FSL shall ensure that the forensic examination of the mobile submitted for FSL report is prepared positively within a period of four weeks from today.
23. The applicant would be at liberty to apply for bail afresh after the expiry of four weeks and after the testimony of the informant and the victim, as directed above, are recorded.
24. I am not dealing with the submissions made by the respective counsels in respect of evidences collected at this stage as the same would adversely affect the trial.
25. The bail application of the applicant Moid Ahmad stands rejected with the liberty as recorded above.
26. Let a copy of this order be sent to the Superintendent of Police Ayodhya as well as to the trial court.

**Order Date :- 3.10.2024**

VNP/-

**[Pankaj Bhatia, J]**