

**Court No. - 68**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 18596 of 2024

**Applicant :-** Satish Alias Chand

**Opposite Party :-** State Of U.P. And 3 Others

**Counsel for Applicant :-** Manvendra Kumar

**Counsel for Opposite Party :-** G.A.

**Hon'ble Krishan Pahal,J.**

1. List has been revised.
2. Learned A.G.A. has informed that notice to the informant has been served on 10.5.2024.
3. Heard Sri Manvendra Kumar, learned counsel for the applicant and Sri Pranshu Kumar, learned A.G.A. for the State and perused the record.
4. Applicant seeks bail in Case Crime No.205 of 2023, under Sections 363, 366, 376 I.P.C. and 5(J)2/6 POCSO Act, Police Station- Barahaj, District- Deoria, during the pendency of trial.

**PROSECUTION STORY:**

5. As per prosecution story, the applicant is stated to have enticed away the minor daughter of the informant on 13.6.2023 at about 04:00 p.m.

**RIVAL CONTENTIONS:**

***(Arguments on behalf of applicant)***

6. Learned counsel for the applicant has stated that the applicant is absolutely innocent and has been falsely implicated in the present case. The FIR is delayed by about four days and there is no proper explanation of the said delay caused. The victim is a consenting party which is but evident from her statement recorded under Section 164 Cr.P.C. and as per her own statement she was 18 years old.

7. It is further argued that the victim did not raise any alarm during the said sojourn to Deoria and thereupon to Surat, Gujarat which categorically indicates her consent. It is further argued that the victim and applicant were madly in love with each other and out of fear of their parents had eloped and solemnized their marriage at a temple which is not registered. The applicant and the victim belong to the same village and were neighbours. The victim was pregnant by six months at that time and is stated to have given birth to a female child about four months back. He further argued that the applicant proposes to rear his child as he is the father and he is very much willing to keep his married wife and the newborn baby with him.

8. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. There is no criminal history of the applicant. The applicant is languishing in jail since 5.1.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

***(Arguments on behalf of State/Opposite party)***

9. Per contra, learned A.G.A. has vehemently opposed the bail application but has not disputed the fact that out of the said union of the couple, a baby girl was born and she is more than four months old at present, who is being taken care of by the parents of the victim, although he has not disputed the fact that the applicant has no criminal history.

**CONCLUSION:**

10. Admittedly, the age of the victim is 18 years as per the ossification test report. The Supreme Court in **Jaya Mala vs. State of J & K**<sup>1</sup> and **Mohd. Imran Khan vs. State (Govt. of NCT of Delhi)**<sup>2</sup> has been opined

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1 (1982) 2 SCC 538

2 (2011) 10 SCC 192

that the radiologist cannot predict the correct date of birth rather there is a long margin of 1 to 2 years on either side.

11. The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because he or she is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been reiterated by the Supreme Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another**<sup>3</sup>. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

12. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

13. This Court earlier on in the case of **Ramashankar vs. State of U.P.**<sup>4</sup> has observed as under:

“9. In this conservative and non-permissive society, it is true that marriage in the same village is prohibited and is not customary, and it may be an after effect of media and cinema. Instances of marriage in the same village are on the rise. This does adversely affect the social fabric. Both the accused and the victim are of very young age and have barely attained the age of majority. A baby girl has been born out of their wedlock. Though, the marriage may not be described as per the law of the land, but the Court has to apply a

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3 2022 SCC OnLine SC 825

4 2022:AHC-LKO:29649

pragmatic approach in such conditions and indeed both the families are required to act practically. A lot of water has flown down the Ganges. Now, it's time to move ahead.

10. The youth in their tender age become victim to the legal parameters though rightly framed by the legislature, but here this Court is being drawn to make an exception in the extraordinary circumstances of the case. The life of a newborn child is at stake. She cannot to be left to face the stigma during her life.

11. The mathematical permutations and combinations have to be done away with. A hypertechnical and mechanical approach shall do no good to the parties and why should an innocent baby out of no fault of her bear the brutalities of the society in the present circumstances. Human psychosis and that too of the adolescents has to be taken into account.

12. This Court in the case of **Atul Mishra vs. State of U.P. And 3 others**<sup>5</sup>, has also done away with the stringent provisions of the P.O.C.S.O. Act under the extra-ordinary circumstances of the case.”

14. This court has every now and then expressed concern regarding the application of the Protection of Children from Sexual Offences (POCSO) Act on adolescents. While the Act's primary objective is to protect children under the age of majority (18) from sexual exploitation, there are cases where it has been misused, particularly in consensual romantic relationships between teenage persons. When addressing these cases, it is crucial to:

A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined.

B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.

C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.

D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect.

15. The challenge lies in distinguishing between genuine cases of exploitation and those involving consensual relationships. This requires a nuanced approach and careful judicial consideration to ensure justice is served appropriately.

16. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

17. Let the applicant- **Satish Alias Chand** involved in aforementioned case crime number 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 is being released on bail on the assurance of the learned counsel for the applicant that he is very much willing to take care of his wife (victim) and the infant. The applicant shall deposit (fixed deposit) a sum of Rs.2,00,000/- in the name of new born child of the victim till her attaining the age of majority within a period of six months from the date of release from jail.**

(ii) The applicant will not tamper with the evidence during the trial.

(iii) The applicant will not pressurize/ intimidate the prosecution witness.

(iv) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(v) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected of the commission of which he is suspected.

(vi) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

18. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

19. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

**Order Date :- 3.7.2024**

Vikas

**(Justice Krishan Pahal)**