
(1999) 10 AHC CK 0113
In the Allahabad High Court

Case No : Criminal Miscellaneous Bail Application No. 11699 of 1998;

Raj Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Citation : (1999) 10 AHC CK 0113

Hon'ble Judges : J.C.Gupta, J

Final Decision : Allowed

Judgement

1. C. Gupta, J.—Counteraffidavit filed on behalf of the complainant and rejoinderaffidavit filed on behalf of accused Raj Kumar and affidavit filed by Gyan Prakash in reply to the show cause notice for cancellation of bail are taken on record.

2. Heard Sri Manish Tiwary for the, applicantaccused Raj Kumar and accused Gyan Prakash, Sri K.N. Raha for the complainant and the learned A.G.A. appearing for the State.

3. It is not disputed that coaccused Gyan Prakash was allowed bail by the order dated 201198 on the ground that the medical report revealed that the prosecutrix was aged about 19 years. At the lime of hearing of bail application of coaccused Raj Kumar it was pointed out by the learned counsel for the complainant that in the initial medical examination the senior Radiologist reported the age of the girl to be about 19 years but subsequently on some agitation the matter for determination of age was referred to C.M.O., who thereafter opined that the girl was about 13 or 14 years of age. It was contended by the learned counsel for the complainant that bail was allowed to coaccused Gyan Prakash on wrong assumption of fact that the girl was above 16 years of age. Accordingly this Court issued a notice to accused Gyan Prakash to show cause why his bail be not cancelled. It is now pointed out by the learned counsel for the accused persons that subsequently the matter was referred to State Medical Board, Uttar Pradesh, Lucknow and the Board examined Km. Poonam

Arora, took Xray and performed other tests and the Board came to the conclusion that the girl appeared to be 19 years of age. Copy of the said report has been annexed with the counter affidavit. Sri Raha on the other hand argued that the girl has been examined by the Board in the year 1999 whereas FIR was lodged in May 1998 and as per the School leaving certificate she was below 16 years of age.

4. Since the real question regarding the age of the girl is yet to be determined finally On the basis of evidence adduced at the trial, therefore, it may not be appropriate for this Court to give a finding either way on the said issue but in view of the fact that there is an opinion of the Medical Board which was headed by Director of Medical Health of the State Government, in favour of accused persons and also having regard to the facts and circumstances of the case, I am not inclined to cancel bail granted to accused Gyan Prakash alias Babloo and the show cause notice issued to him is hereby discharged.

5. Since the case of accused applicant Raj Kumar stands on same footing as that of Gyan Prakash alias Babloo, he is also admitted to bail and he shall be released on bail on his executing a personal bond in the sum of Rs. 25, 000/ and furnishing two sureties each in the like amount to the satisfaction of the C.J.M. concerned in Case Crime No. 221/98 under Section 376/506, I.P.C., PS. Sadar Bahar, district Shahjahanpur.

6. It is further made clear that the bail granted to both the accused namely, Gyan Prakash alias Babloo and Raj Kumar shall be subject to the following conditions:

(1) that they shall not terrorise witnesses or tamper with the evidence;

(2) that they shall not leave the territorial jurisdiction of the Court without prior permission of the trial Court; and

(3) that they shall cooperate with the expeditious disposal of trial and if at any stage it is found by the trial Court that the said accused persons are delaying the progress of the trial, it shall be open for the trial Court to cancel their bail.

7. The trial Court is further directed to proceed with the trial on day to day basis strictly in accordance with the provisions of Section 309, Cr. P.C. and S.P. Shahjahanpur is directed to ensure that the trial is not adjourned for nonproduction of witnesses. Bail granted.