



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous Bail Application No. 20783/2021

Rahul Katara :

(At Present Accused Petitioner Confined In Dist. Jail Bharatpur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 20845/2021

Anshul Soni

(At Present Confined In Central Jail Sewar,

----Petitioner

Versus

State Of Rajasthan, Through P.p.

----Respondent

S.B. Criminal Miscellaneous Bail Application No. 3583/2022

Jitendra Singh Guliya

(At Present Lodged

----Petitioner

Versus

State Of Rajasthan, Through P.p.

----Respondent

For Petitioner(s) : Mr.Anil Kumar Upman
Mr.Rajneesh Gupta
Mr.S.S.Hora with Mr.Tarachand
Sharma



For Respondent(s) : Mr.S.K.Mahala, PP
Mr.K.S.Faujdar

HON'BLE MR. JUSTICE FARJAND ALI

Judgment / Order

16/03/2022

The instant bail application(s) have been preferred on behalf of the accused petitioner(s) Rahul Katara S/o Shri Vishnu Kumar, Anshul Soni S/o Ravi Kumar Soni and Jitendra Singh Guliya S/o Shri Gopichand Guliya, who are in custody in connection with F.I.R. No. 873/2021 registered at Police Station, Mathura Gate District Bharatpur, for the offences punishable under section 377/34 of I.P.C. and 5/6 of P.O.C.S.O. ACT.

All three applications have been moved separately bearing bail applications nos. 20783/2021, 20845/2021 and 3583/2022 respectively. Since all the matters are emanating from the same F.I.R. and were tagged together therefore, it is deemed appropriate to decided all the application(s) filed herewith, through a common order with the consent of the parties.

Bereft of elaborate details, the facts necessary for the adjudication of the bail application(s) are that, on 31.01.2021 at about 18.04 hours the aforesaid FIR came to be registered at the behest of the complainant Pinky Singh, who happens to be the Mother of the child victim "H", wherein she alleges that her minor child "H" aged about 14 years, used to play tennis at District club Company where he came into contact with accused Jitendra Guliya who also used to come there for playing tennis. The accused



Jitendra Guliya established good acquaintance with her son and coaxed her minor child to accompany him at his residence where he made her son drink cold drink containing some intoxicating substance and thereafter, he removed his clothes and sexually abused him by committing unnatural sex with him.

In the complaint it is alleged that the accused Jitendra Singh had videographed the incident and also threatened her minor son to face dire consequences, if he tells anyone. As per F.I.R, on 28.10.2021 at about 4 P.M. at the time when the accused came to drop complainant's son at her house, she saw accused Jitendra Singh kissing her son on his lips in the car; noticing the fact that they were seen by her; the accused left the place immediately. It was after serious persuasion made by the complainant, that her son had narrated the entire incident as to how he was being subjected to sexual abuse by the accused persons Jitendra Singh Guliya, Rahul Katara and Anshul Soni, since a month.

Furthermore, as alleged that on 29.10.2021, the complainant did not allow her son to go to play at club, whereupon all the aforesaid three accused along with one police officer P.L Yadav came at her residence and while threatening her all the accused persons had said to allow her son "H" to accompany accused Jitendra Singh Guliya for her good, otherwise she would have to face dire consequences. The complainant alleged that on the same day in the night accused Jitendra Singh had made a phone call to her; where, it was alleged that he was threatening her however, when she made him know that she was aware of everything about him and after hearing the same, the call was



disconnected by the accused. It was asserted by the complainant that, on 30.10.2021 accused persons had admitted their guilt and asked her to forgive them for their wrongful act and further assured that they will not repeat the same in future. And later, it was stated in the F.I.R. that all the accused persons along with the aid of a Police officer P.L. Yadav, conspired to frame the complainant in a false case of extortion.

At the outset, learned counsel for the petitioner submits that the accused/petitioner Jitendra Singh Guliya is an officer of higher judiciary, who has an untainted and impeccable record and reputation across all corridors of society. The accused has just been roped falsely in this case. It is submitted that the petitioner had been posted as a Special Judge ACB Cases, District Bharatpur in August 2020. That owing to the shutting down of gym, the petitioner started playing tennis at the club, where he came across with alleged child victim "H" who along with his elder brother "K" came there to play tennis. The child "H" interacted with the petitioner and told him that his father is no more and things are being managed by his mother alone, and looking to his talent and other challenging factors, the petitioner showed his benevolence and told him to share anything which he wants or if he could do anything constructive or otherwise manage something for him.

It is submitted by the learned counsel for the petitioner that the as per the allegation on 28.10.2021, the complainant saw her son being kissed by the petitioner in the car and thereafter, on the very same day the entire incident came into the notice of the complainant still the FIR came to be lodged by her after inordinate



delay as the same got lodged on 31.10.2021 at 18.04 PM until, a case of extortion came to be registered. Well on the contrary, the statements of the complainant as well as of the alleged child victim "H" reveals that no such retaliation or confrontation was made on the phone call with the petitioner regarding the factum of unnatural sexual acts committed by the petitioner with her son till 29.10.2021 the scooty incident took place, which in fact is against the normal human conduct. This fact was further corroborated in the statements of complainant's elder son "K", who had stated in his statements recorded under Section 161 Cr.P.C. that before 29.10.2021 he was not known to such incident neither his brother had told him about such incident, it was for the first time his mother had told him about the incident on that very day. It is notable that every day both the brothers used to go to play in ground together, there's not a single incidence where the victim went alone.

Learned counsel referred to the statements of elder brother "K" which are very relevant as his younger brother had never complained that the petitioner ill treated or he observed any unnatural conduct on his part towards him rather he fortified that they took Rs.20,000/- as loan for Scooty from the petitioner Jitendra.

The statements of "K" the brother of the victim, assert that it was on 30.10.2021 that his mother; for the first time had told Rahul Katara that petitioner Jitendra Singh had sexually abused her child "H". It was further argued by the counsel for the petitioner that nothing came on the record which suggests that as to how, both Anshul and Rahul had knowledge of the sexual act of



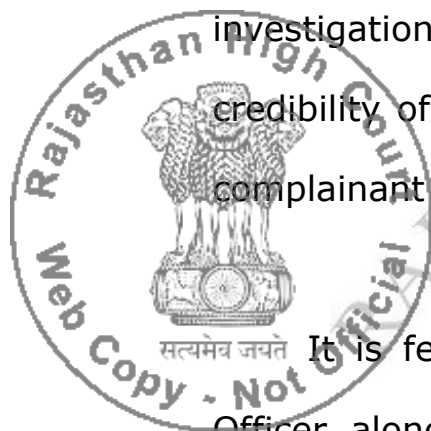
Jitendra Singh with the Child Victim and upon the strength of the same he also was subjected to the same act on 21st and 22nd October, which makes the story of the complainant highly improbable. The allegation that both the accused Rahul & Anshul told the victim to allow them too the same sexual act which their officer used to commit seems to be absurd in view of the fact that nowhere it has come on record as to how Rahul and Anshul came to know about the alleged sexual act. Rahul and Anshul are judicial clerks of the court and are not resident of the same locality. The Court campus and residences are also not in the same vicinity. The three employees deployed at the residence of the petitioner Jitendra clearly state that those two clerks did visit the residence only once in a while for judicial work only or to supply a document.

Learned counsel for the petitioners meticulously points out that nothing has come in the medical examination report of the alleged child victim which goes on to suggest that the alleged sexual act was committed; no injury marks were found on the body part of the child which definitely negates entirely cooked up story of the complainant. More so, no alleged video came to be found in the investigation, no obscene material has been detected from the mobile of the accused which was seized by the Police, now charge-sheet has been filed.

It is further pointed out by the learned counsel(s) that complainant asserted specific allegation against all the petitioner(s) Jitendra Singh, Rahul Katara and Anshul Soni in the FIR; in her statements as recorded under section 161 of CRPC,



she omitted the names of Anshul Soni and Rahul Katara; and further in her statement recorded under section 164 of CRPC, allegations were made against Jitendra Singh and Anshul Soni only and she omitted the name of Rahul Katara. Such major discrepancy in the FIR and later developments made in 161 and 164 statements, as recorded during the course of the investigation, creates serious doubts and strikes over the credibility of the same. As per learned counsels, the stand of the complainant is not firm even at the initial stage.



It is fervently urged that in FIR it is alleged that a Police Officer alongwith all three accused came to the house of the complainant and pressurized her to send her son with the petitioner Jitendra otherwise be ready for the dire consequences. This allegation has been found false by the investigating agency and thus the police officer P.L. Yadav has been exonerated from the charges. Prima facie, it appears to be highly preposterous and against ordinary human conduct that how in broad daylight such assertion can be made in presence of public. Although the principle of "falsus in uno, falsus in omnibus" is not adopted in Indian Criminal Jurisprudence, yet while hearing a bail plea to some extent it can be taken into account.

Learned counsel further submits that the entire story has been framed falsely by the complainant as no independent witness had supported the allegation made regarding sexual abuse; as a matter of fact, no one, even in the neighbourhood of the complainant, had supported the complainant's version of act of kissing her minor child in the car by the accused Jitendra Singh on



28.10.2021. It is argued that the incident of kiss in the car was seen by the complainant at 4 PM as mentioned in the FIR and later the developments were also made by her whereby the time came to be changed to around 7 PM.

At this juncture, the learned counsel appearing on behalf of petitioner(s) submits that, in the FIR all the three accused allegedly sexually abused the minor Child "H" at the residence of the petitioner Jitendra Singh but except for the bald allegation and statements made by the alleged child victim "H" as well as his complainant mother, nothing came upfront during the investigation materially in the form of evidence where one could safely infer the commission of such act. The learned counsel for the petitioner(s) referred to the Statements of Brijkishore, Ghanshyam and Narendra recorded under section 161 CRPC who totally deny that any such act took place at the residence. These three witnesses were supposed to be present all the time at the residence of petitioner Jitendra. At this stage of bail; their statement can be considered.

It is submitted by the counsel(s) that, the allegation made in the FIR, against the other two people Rahul Katara and Anshul Soni are highly improbable rather inconsistent, as complainant in her 161 statements alleges nothing against both of them in respect of any sexual act with her son. Later in 164 Statements, she only names Jitendra Singh and Anshul Soni for committing such unnatural act with her son, which creates serious doubts in respect of the alleged incident. The FIR came to be lodged on a



typed report duly signed by the complainant which was given on the 4th day of the incident.

Learned counsel drew attention towards the statement of one Prempal, an independent witness, who stated that he received a call from Rahul Katara on 31.10.2021, same day before lodging of the FIR, where he sought help that complainant is levelling allegation against all three of us for sexual abuse on her son, but the issue is only with regard to scooty and one person is seeking money on account of settling the dispute. This witness clearly says that he was informed that a man from complainant side was demanding huge amount lest serious case would be registered against the petitioner.

It was argued that the serious contradiction and wilful omission in the statements of the child victim, complainant, her elder son and other independent witnesses had made the story of the complainant highly inconsistent and absurd with the others with regard to the alleged incident, time, persons and knowledge. Thus, it was jointly prayed that all the petitioners may kindly be released on bail.

On the contrary, the learned public prosecutor as well as counsel for the complainant fervently and vehemently opposed the bail application of the petitioners upon the ground that the offences are of a serious nature and the statements made under 161 and 164 of CRPC, are very much consistent with each other along with the other material on record, therefore, the accused



petitioners shall not be released on bail and the same deserved to be dismissed.

Heard learned counsel(s) for the petitioner(s), as well the respondent State and counsel appearing on behalf of the complainant, perused the order so assailed, and other material made available on record.

This court is well conscious of factum of the case as well as the gravity of the offences as alleged against the accused petitioners. Needless to say that every citizen of this country is abided and governed by Rule of Law and one has to follow it as no one is above the Law, as in fact no one can. The instant case has its own peculiar strings which contain some unusual tone and this court wants to dwell upon the issues warranting and appropriate only to an extent of hearing and adjudication of the bail applications.

The allegations have been levelled against a Sitting Judge as well as against the ministerial staff of his Court, for committing unnatural sexual act on a minor boy Child "H". The nature of allegations itself warrants a critical and factual scrutiny of the facts so alleged.

I have meticulously went through the entire chargesheet available on record and also taken into consideration various circumstances under which developments took place from lodging of the FIR till filing of the chargesheet. In the present case, despite having knowledge of the alleged act on 28.10.2021 itself,



the FIR came to be lodged by the complainant with considerable delay of 3 days without a reasonable explanation as the same came to be lodged on 31.10.2021 at about 16.04 hours, which goes on to hit the roots of the case; further the unnatural conduct of phone call conversation between the petitioners and the complainant, after having known the factum of sexual assault over her son, which not only creates serious doubts over the case of the prosecution but also makes it improbable in the given circumstances.

As per the counsel for the petitioner(s), it is argued that the entire story of the case revolves around the transfer of scooty to the petitioner Jitendra Singh, while drawing the attention of this court towards various independent statements of the witnesses. Upon perusal of the same, it seems that the entire episode created on 29. 10.2021, for signing of transfer papers of scooty, was given more importance in preceding days instead of getting the report lodged for the alleged act, which somehow dents the complainant's story. In line of consideration, the statement of complainant's elder Son "K" is relevant as in his statements he too was not aware of the incident which happened with his younger brother. He further fortifies that a loan of Rs. 20,000/- was given by the accused Jitendra Singh to his mother who had given guarantee for the scooty.

Another vital aspect came into consideration before this court that, FIR was lodged against all three accused where specific allegations regarding sexual act was fastened. But the statements recorded under section 161 and 164 of CRPC spill out some different story with respect to petitioner Anshul Soni and Rahul



Katara, whereby the complainant as well as the child victim "H" absolves the name of Rahul Katara which is quite strange.

Numerous developments and contradictions are lying on the record which create serious suspicion. In totality, implication of Anshul Soni and Rahul Katara as accused somehow lands the story of prosecution in shadow, as no independent witnesses like security guard and personnel at the residence of accused petitioner, as argued by the counsel for the petitioners, fortified such factum of unnatural sexual act. Had it been a case of allegation of like nature against the petitioner Jitendra only who happened to be judicial officer, the consideration of this Court might be altogether different.

Another aspect of this case which persuaded this Court would be the exoneration of DSP P.L. Yadav against whom serious aspersions were made but the investigating agency absolved him from the allegations and the final report has not been challenged by the complainant party and no order is there under Section 190/193 of the Cr.P.C. Thus, the complainant has been belied to this extent.

सत्यमेव जयते

It is well-nigh settled that the provisions of bail are neither punitive nor preventive in nature. Graver the offence is alleged greater the standard of proof is required; The gravity of the offence or the severity of punishment alone is not a factor to be considered while adjudicating the bail plea. There are several other aspects which are required to be considered simultaneously with the gravity of nature i.e. if there is any apprehension that if the accused will be released on bail, he would hamper the



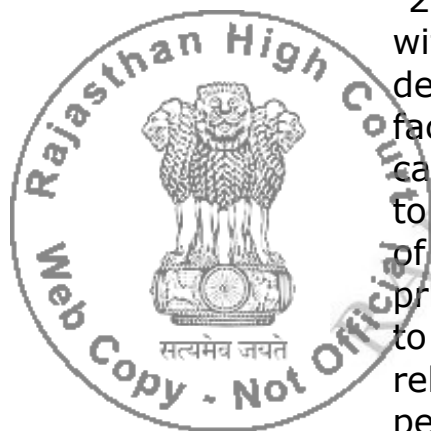
prosecution evidence or would flee from justice or would not be readily available for the trial or otherwise hamper the course of smooth trial.

The Hon'ble Apex court in **Sanjay Chandra vs CBI, (2012)**

1 SCC 40, also opined that:

"25.The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required".

"14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any





circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson".



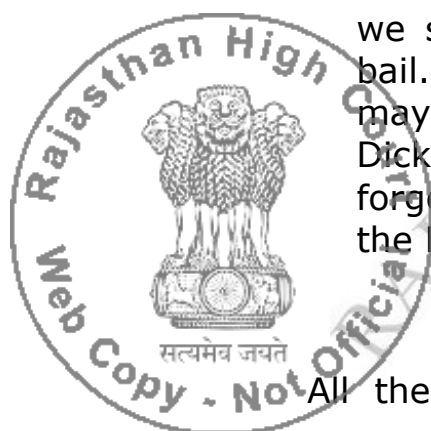
It is well settled that the pre-conviction detention is not warranted by law. The primary principle of criminal law is that an imprisonment may follow after a judgment of guilt, but should not precede it. There is also another principle which makes it desirable to ensure that the accused is present to receive his sentence in the event of being found guilty. Further, the object of keeping the person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. In the case in hand neither any apprehension has been shown by the counsel for the respondent nor any material has been made available from which an inference can be drawn regarding the aforesaid apprehension. The seriousness of the allegations or the availability of the material in respect thereof are not the only considerations for declining the bail. The case in which the petitioner is seeking bail is exclusively triable by the Special Court POCSO Cases.

The Hon'ble Supreme court, in the case of **State of Kerala Vs. Raneef, 2011 1 SCC 784**, has held as under:-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in



concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."



All the accused persons are government servants out of which one is a Judicial officer and if the pre-conviction detention does not lead to conviction then compensation for such detention whereby tarnishing the reputation of an individual holding a Judicial post will never be compensated. Thus, the detention is not supposed to be punitive or preventive; and for the reasons as noted above this court is of the considered view that since the accused is languishing in judicial custody, his further incarceration would not serve any fruitful purpose. Thus, this court deems it appropriate to enlarge the petitioner on bail.

This order relates to criminal prosecution only; as far as the concern of maintaining judicial discipline, morality or colourable exercise of power by the judicial officer, i.e. the petitioner, is concerned, the High Court in its administrative side, has already initiated an inquiry, as apprised to this Court. Thus, for the above, the administrative committee will surely exercise authority independent of this order.



It is made clear that any observation in this order as made hereinabove, shall not have any impact in the present case at any stage of trial and the trial court shall not be influenced. The same is observed in respect of limited issue of granting bail and not otherwise.

Accordingly, the bail applications under Section 439 Cr.P.C. are allowed and it is ordered that the accused-petitioners shall be enlarged on bail provided each of them furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for their appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

Gaurav Sharma /125-127

