

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24971 of 2021

Applicant :- Govind

Opposite Party :- State of U.P.

Counsel for Applicant :- Lal Behari Yadav,Akhilesh Kumar,Janardan Yadav,Santosh Kumar Tiwari

Counsel for Opposite Party :- Hirdesh Kumar Yadav,Sushma Yadav

Hon'ble Rajeev Misra,J.

1. Heard Mr. Akhilesh Kumar, the learned counsel for applicant and the learned A.G.A. for State. Even though, Mr. Hridesh Kumar Yadav and Mrs. Sushma Yadav have put in appearance on behalf of first informant-opposite party 2 and their names are duly published yet neither they nor any anyone on their behalf is present to oppose this application for bail.

2. Perused the record.

3. It is apposite to mention here that present application was taken up on 23.11.2023 on the mention made by the learned counsel for applicant. The Court passed the following order dated 23.11.2023:-

"Heard Mr. Akhilesh Kumar, the learned counsel for applicant and learned A.G.A. for State.

This case has been taken out of turn on the mentioned made by the learned counsel for applicant.

At the very outset, the learned A.G.A. submits that his record is not available.

In view of above, the hearing of present application is adjourned.

Put up tomorrow i.e. 24.11.2023. "

4. Learned counsel for applicant submits that information with regard to the listing of the present application for bail has already been transmitted to the learned counsel representing first informant through whatsapp message. The copy of the extract of the whatsapp message so sent has been placed before Court. Same is taken on record.

5. This application for bail has been filed by applicant-Govind, seeking his enlargement on bail in Case Crime No. 74 of 2021, under Sections 363, 366, 376 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Ghosi, District-Mau during the pendency of trial.

6. Learned counsel for applicant submits that present application for bail came up for orders on 09.01.2023 and this Court passed the following order:-

"C.J.M., Mau is directed to get ossification test of the victim conducted through C.M.O., Mau within period of two weeks and send the same to this court.

List this case on 08.02.2023."

7. Subsequent to above order dated 09.01.2023, the ossification test of the prosecutrix was conducted. As per the medical opinion, the age of the prosecutrix is said to be 19 to 20 years. On the above premise, the learned counsel for applicant submits that the prosecutrix is major. Attention of the Court was then invited to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. which are on record as Annexures-3 and 5 to the affidavit filed in support of the present application for bail. The prosecutrix in her aforesaid statements has not supported the FIR. As per the tone and tenor of the aforesaid statements, she is a willing and consenting party. Learned counsel for applicant further submits that the prosecutrix in her subsequent statement under Section 164 Cr.P.C. has categorically stated that she has solemnized marriage with the applicant. In view of above, criminality, if any, committed by the applicant stands washed off.

8. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 08.02.2021. As such, he has undergone more than 2 years and 9 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

9. Per contra, the learned A.G.A. has opposed the prayer for bail.

However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

10. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that as per the medical opinion, the prosecutrix is major, she is said to be aged about 19 to 20 years, the prosecutrix in her statements under Sections 161/164 Cr.P.C. has not supported the FIR, the prosecutrix in her subsequent statement under Section 164 Cr.P.C., has further stated that she has solemnized marriage with the applicant, in view of above, the criminality, if any, committed by the applicant stands washed off, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

11. Accordingly, the bail application is **allowed**.

12. Let the **applicant-Govind**, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL

DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT IS DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

13. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 24.11.2023

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