

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25618 of 2023

Applicant :- Deepak

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

Counsel for Applicant :- Sanjay Singh, Shivam Singh

Counsel for Opposite Party :- G.A., Anup Kumar Srivastava

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sanjay Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. ,Anup Kumar Srivastava the learned counsel representing first informant.

2. Perused the record.

3. Instant bail application has been filed by applicant-Deepak seeking his enlargement on bail in Case Crime No.134 of 2022 under Sections, 363, 376, 506 I.P.C. and Sections 5/6 POCSO Act, Police Station-Salempur, District-Deoria, during the pendency of trial.

4. Record shows that applicant was enlarged on interim bail by this Court vide order dated 19.06.2023. For ready reference, the order dated 19.06.2023 is reproduced herein-under:

" 1. Heard learned counsel for the applicant, learned A.G.A. for the State, learned counsel for informant and perused the record.

2. The instant bail application has been filed on behalf of the applicant, with a prayer to release him on bail in Case Crime No.134 of 2022, under Sections 363, 376, 506 I.P.C. & Section 5/6 POCSO Act, Police Station Salempur, District-Deoria, during pendency of trial.

3. Prosecution case, in brief, is that on 20.06.2022 at 08:00 p.m. when the victim was going to filed for defecation, the present

applicant alongwith three other accused persons kidnapped the victim on the point of country made pistol and subjected to her rape.

4. It is submitted that the present applicant has been falsely implicated in this case. It is also submitted that the applicant has married to the victim as per Hindu Customs and Traditions in a temple. Learned counsel has also annexed photographs relating to the performance of marriage. The learned counsel further submits that a male child has also born out of the wedlock. He further submits that no one is there to look after the newly born baby and wife of the applicant, therefore, the applicant be enlarged on interim bail.

5. Learned AGA is directed to verify whether the accused-applicant has solemnized marriage with the victim, and they had lived as husband and wife or not. If it's come in the report that the accused-applicant has solemnized marriage with the victim, a proper verification report be filed before the Court on the next date of hearing.

6. Keeping in view the above facts and circumstances, interim bail is granted to the accused-applicant, till the next date of hearing i.e. 20.07.2023 The applicant- Deepak be enlarged on interim bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following terms and conditions mentioned hereinbelow:-

i. The applicant shall furnish the details of his Mobile number, which he would keep during the period of interim bail to the S.H.O., P.S. Salempur, District Deoria.

ii. The applicant shall also furnish his address, on which he would reside during the period of interim bail to the S.H.O., P.S. Salempur, District Deoria.

iii. The applicant shall not leave Salempur, District Deoria during the period of interim bail.

7. The applicant is further directed to surrender before the Court below immediately after completion of his interim bail before the Chief Judicial Magistrate concerned.

8. A compliance report of the terms and conditions mentioned hereinabove shall be submitted before this Court on the next date of listing by the S.H.O., P.S. Salempur, District Deoria.

9. List this case on 20.07.2023, as fresh. "

5. Present application came up for orders again on 20.07.2023 and this Court passed the following order:

"The victim, Kinjal, along with her new born child is present in court with the applicant, who is on interim bail. The mother-in-law of the aforesaid victim is also present in court. The victim and her mother-in-law both have agreed and given statement before the court that the victim wants to resides with the applicant and her mother-in-law has no objection to their marriage and will keep the victim in the house. Applicant is already on interim bail as per order of this court dated 19.06.2023. The interim bail granted to the applicant is extended for further period of three months on some terms and conditions. In the meantime, applicant is directed to get his marriage registered before the Registrar and place before this court marriage registration certificate along with his affidavit.

List this case again on 16th October, 2023 as fresh case.

Order Date :- 20.7.2023 "

6. On the above premise, it is submitted by the learned counsel for applicant that prosecutrix is below 18 years of age therefore marriage of the parties could not be registered. Admittedly, the prosecutrix has solemnized marriage with applicant, and from the said wedlock a male child was born. There is no animosity with the family members of applicant to keep the prosecutrix. 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 custody since 09.02.2023. As such, he has undergone more than seven months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant therefore the entire evidence sought to

relied upon by the prosecution against applicant stands crystalized. Upto this stage, no such circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends 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.

7. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the present bail application. They submit that since the applicant is a named as well as charge-sheet accused, therefore he does not deserve any indulgence by this Court. However they Could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

8. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant/opposite party-2, upon consideration of evidence on record, accusations made as well as complicity of applicant coupled with the fact that applicant was already granted interim bail, clean antecedents of applicant, period of incarceration undergone by applicant, police report (charge-sheet) under 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 crystalized, yet in spite of above, the learned A.G.A. and the learned counsel for first informant 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 submissions urged by learned A.G.A. in opposition to this application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for

bail.

9. Accordingly, the interim bail granted to the applicant is made absolute with following conditions

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 16.10.2023

YK