

Neutral Citation No. - 2023:AHC:203901

Reserved On:- 18.10.2023

Delivered On:- 26.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33038 of 2023

Applicant :- Ravi

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

**Counsel for Applicant :- Jai Singh,Rajesh Kumar Tiwari,Sudhir Kumar
Agarwal,Vinayak Varma**

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

Hon'ble Siddharth, J.

1. Heard Sri Vinayak Varma, counsel for the applicant; Sri Dileep Kumar Srivastava, learned counsel for the informant and learned A.G.A for the State.
2. There is allegation in the FIR that the minor sister of the informant was enticed to away by his married collateral, the applicant, on 29.05.2023 at 3 a.m in the early morning. The mother and father of the applicant were also implicated as co-accused in this case. Apprehension was expressed that the applicant will sell off the sister of the informant.
3. Learned counsel for the applicant submits that it is a case of false implication of the applicant by the informant who is related as collateral of the applicant
4. Learned counsel for the applicant also submits that the victim and the applicant are well-known to each other. The victim willingly eloped with the applicant and went to Delhi and solemnized marriage with the applicant. She has admitted in her statement recorded under section 161 Cr.P.C., that she is in love with the applicant. In her statement recorded

under section 164 Cr.P.C, she has admitted that she was forcibly abducted by the applicant in a car and taken to Allahabad where he forcibly raped her. However, in her statement recorded under section 161 Cr.P.C she has stated that she left her house at 12 p.m and went to Gorakhpur bus stand. From there she went to Delhi and married the applicant in a temple and then came back to Gorakhpur by train. When both were going to Doharighat, they were caught by the police in the way.

5. Learned counsel for the applicant further submits that from the medical examination report of the victim, no sign of commission of alleged offence has been found.

6. Learned A.G.A and counsel for the informant have vehemently opposed the bail application. They have submitted that the victim is minor aged about 16 years. The applicant forcibly abducted her and recovery of victim has been made from his possession.

7. It has further been submitted that the applicant earlier abducted another girl and Case Crime No. 512 of 2022 was registered against him under Section 366 IPC. It has been submitted that the applicant is a criminal minded person and may threaten the victim if he is enlarged on bail.

8. Counsel for the applicant has rejoined and has submitted that the mother of the applicant is ex-gram pradhan of the village. The informant is also residing in the same village panchayat and there is enmity between them and hence the applicant has been falsely implicated in this case. The victim has subsequently been married to another boy, Ranveer, in District Deoria and is living with him. In case, she was minor how she has been married to another boy has not been explained.

9. After hearing the rival contentions, this court finds that as per ossification test report of the victim, she is aged about 16 years. Given margin of two years on the higher side, she can be considered to be major. Her statements are partly in favour of the applicant and partly against him. The enmity between their families is admitted. They are residents of some village panchayat and also collaterals. It would be unsafe to deny bail to the applicant at this stage.

10. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicants being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of *Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021*; considering 5-6 times overcrowding in jails over and above their capacity by the under trials 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.

11. Let the applicant, Ravi, involved in Case Crime No. 341 of 2023, under Sections- 363, 366, 376, 120-B IPC and Section 3/4 of POCSO Act, Police Station- Barhalganj, District- Gorakhpur, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against them under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 him in accordance with law.

13. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. Identity and residence proof of the applicants and sureties be verified by the court concerned before the bonds are accepted.

15. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

16. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

Order Date :- 26.10.2023

Rohit