

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38921 of 2023

Applicant :- Sonu Yadav

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

Counsel for Applicant :- Yadavendra Dwivedi, Gaurav Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Yadavendra Dwivedi, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Sonu Yadav seeking his enlargement on bail in Case Crime No. 35 of 2023, under section 363, 366, 376 IPC and Sections 3 and 4 POCSO Act, Police Station- Jamalpur, District Mirzapur during the pendency of trial.

At the very outset, the learned, A.G.A submits that notice of present application for bail has been served upon first informant/opposite party-2. However in spite of service of notice, no one has put in appearance on behalf of opposite party-2 to oppose this application for bail.

Record shows that in respect of an incident which is alleged to have occurred on 17.3.2023, a belated F.I.R. dated 24.3.2023 was lodged by first informant- Rajesh Kumar Singh and was registered as Case Crime No.35 of 2023, under section 363, 366, 376 IPC and Sections 3 and 4 POCSO Act, Police Station- Jamalpur, District Mirzapur. In the aforesaid F.I.R., applicant has been nominated as solitary named accused.

the gravamen of the allegations made in the F.I.R. is to the effect that named accused enticed the minor daughter of first informant i.e. prosecutrix namely-X aged about 17 years.

Learned counsel for applicant submits that from perusal of the statements of prosecutrix as recorded under section 161/164 Cr.P.C., it is apparent that the prosecutrix is a willing and consenting party. She joined the applicant out of her own free will. As such, no offence under sections 363, 366 IPC has been

committed by applicant inasmuch as the prosecutrix was neither abducted nor kidnapped by the applicant. He contends that the prosecutrix in her subsequent statement under section 164 Cr.P.C. has categorically stated that she has solemnized marriage with applicant. The date of birth of the prosecutrix as per her High School certificate is 15.5.2006. The occurrence giving rise to present proceedings occurred on 17.3.2023. As such, the prosecutrix was aged about 16 years 8 months and 2 days on the date of occurrence. According to learned counsel for applicant, since the prosecutrix has solemnized marriage with the applicant, therefore, criminality if any committed by applicant stands washed of. Though the prosecutrix was below 16 years of age on the date of her marriage with the applicant but the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in section 11 (2) of the Hindu Marriage Act. However, up to this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void.

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 12.5.2023. As such, he has undergone more than five months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such, circumstances has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant, with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that prosecutrix has solemnized marriage with the applicant, therefore, the criminality if any, committed by the applicant stands washed of, the age of the

prosecutrix on the date of her marriage with the applicant was below 18 years, yet the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11(2) of the Hindu Marriage Act, there is nothing on record to show that the prosecutrix has initiated proceedings for cancellation of her marriage, 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 crystalized yet 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, the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but without making any comment on the merits of the case, the applicant has made out a case for bail.

Accordingly the bail application is **allowed**.

Let the applicant **Sonu Yadav** be released on bail in the aforesaid case crime number on 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 17.11.2023

Arshad