

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38558 of 2023

Applicant :- Sameer

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

Counsel for Applicant :- Akhilesh K. Dwivedi

Counsel for Opposite Party :- G.A., Dewendra Singh

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Akhilesh Kumar Dwivedi, learned counsel for the applicant, Sri Devendra Singh, learned counsel for the first informant, Sri Birendra Pratap Singh, learned AGA for the State and perused the material on record.
3. Sri Devendra Singh has filed a short counter affidavit dated 30.08.2023 today in Court which is taken on record.
4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Sameer, seeking enlargement on bail during trial in connection with Case Crime No. 578 of 2023, under Sections 363, 366, 376 I.P.C. and 5/6 POCSO Act, registered at P.S. Kasia, District Kushi Nagar.
5. Learned A.G.A. has produced before the Court a certificate of Chief Medical Officer, Kushi Nagar dated 12.10.2023 by which he has ascertained the age of the victim and has opined her to be between 18-22 years of age. The said certificate is taken on record.
6. The F.I.R. of the matter was lodged on 07.7.2023 by Ratna Khatun against the applicant alleging therein that her daughter aged about 15 years, has been allured and enticed away by the applicant who has married her after which he has left her daughter at her house and ran away. She is at present in her house.
7. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim as per the certificate of C.M.O., Kushi Nagar is major girl. It is argued that the applicant and the victim were living as husband and wife since the matter was settled and resolved between them and their families. It is argued that the

applicant has no other criminal antecedents as stated in para-39 of the affidavit and is in jail since 08.7.2023.

8. Learned counsel for the first informant has placed the short counter affidavit and while placing para-9 of the said counter affidavit it is submitted that the applicant and the victim have solemnized marriage/nikah on 02.7.2023 in presence of their family members. Further while placing para-20 of the said counter affidavit, it is submitted that the informant does not want to prosecute the present prosecution as she wants the applicant and the victim enjoy their happy married life.

9. Per contra, learned State counsel opposed the prayer for bail but could not dispute the arguments as aforesaid.

10. After having heard learned counsels for the parties and perusing the record, it is evident that the victim is a major woman, as per the certificate of C.M.O. concerned. The applicant and the victim have solemnized marriage/nikah with each other in presence of their family members and they are living as husband and wife. The informant does not want to pursue the present case against the applicant.

11. Looking to the above facts and circumstances of this case, this Court is of the view that the applicant may be enlarged on bail.

12. Let the applicant- Sameer, 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The 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) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., 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, in accordance with law, under section 174-A I.P.C.

(V) 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

13. 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 and send the applicant to prison.

14. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 17.10.2023

Naresh