

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38796 of 2023

Applicant :- Nitesh Kumar @ Golu

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

Counsel for Applicant :- Dharm Jeet Singh, Hari Bans Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Hari Bans Singh, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Nitesh Kumar @ Golu seeking his enlargement on bail in Case Crime No. 193 of 2023, under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act, P.S. Dibiyapur, District Auraiya, 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 on 18.8.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant opposite party 2 to oppose this application for bail.

Record shows that in respect of an incident, which is alleged to have occurred on 7.4.2023, a prompt F.I.R. dated 7.4.2023 was lodged by first informant Virendra Singh and was registered as Case Crime No. 193 of 2023, under Sections 363, 366 IPC, P.S. Dibiyapur, District Auraiya,. In the aforesaid F.I.R., Nitesh Kumar @ Golu (applicant herein) been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused Golu (applicant herein) is alleged to have enticed away the niece of the first informant i.e. prosecutrix aged about 14 years on 7.4.2023 at around 11.30 a.m.

Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant on 7.7.2023, yet he is

liable to be enlarged on bail. He, therefore, submits that the prosecutrix has solemnized marriage with the applicant. The marriage of the parties has been duly registered under the provisions of the U.P. Registration of Marriage Rules 2017 and certificate dated 20.4.2023 has also been issued in that regard. The copy of the said certificate is on record at page 32 of the paper book. He, therefore, submits that in view of above, there is presumption with regard to the legality of the marriage entered into by the parties. As such, criminality, if any, committed by the applicant stands washed of.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 22.6.2023. As such, he has undergone more than 3 and 1/2 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, yet upto this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. However, he could not dislodge the factual/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 record, evidence, complicity of the accused, accusation made, the nature and gravity of offence, coupled with the fact that though applicant is a named and charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant on 7.7.2023, the applicant has solemnized marriage with the prosecutrix, which has been duly registered, clean antecedents of the applicant, the period of incarceration undergone. the police report in terms of Section 173 (2) Cr. P. C. i.e. charge sheet 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 including 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, the

applicant has made out a case for bail.
Accordingly, the bail application is **allowed**.

Let the applicant **Nitesh Kumar @ Golu** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) 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.

(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 him 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 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 :- 17.10.2023/HSM