

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40652 of 2023

Applicant :- Sonu Yadav

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

Counsel for Applicant :- Gaurav Kumar Chaturvedi

Counsel for Opposite Party :- G.A.,Sanjeev Kumar Shukla

Hon'ble Rajeev Misra,J.

Heard Mr. Gaurav Kumar Chaturvedi, the learned counsel for applicant, the learned A.G.A. for State and Mr. Sanjeev Kumar Shukla, the learned counsel for victim.

At the very outset, learned A.G.A. submits that notice of present application for bail has been served upon opposite party-2 on 20.6.2023. However, inspite of the service of notice, no one has put in appearance on behalf of first informant to oppose this application.

Supplementary affidavit filed by learned counsel for applicant in Court today is taken on record.

Applicant and prosecutrix along with her new born child are present in Court today.

Present application for bail came up for orders on 3.10.2023 and this Court passed the following order:

"Heard learned counsel for the applicant; Sri Sanjeev Kumar Shukla, learned counsel for the informant; learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, Sonu Yadav, with a prayer to release him on bail in Case Crime No. 0288 of 2022, under Sections 363, 366, 376 IPC, 3/4 POCSO Act and 3(2)(va) SC/ST Act, Police Station Atrauliya, District- Azamgarh, during pendency of trial. Learned counsel for the informant has made statement that victim has married the applicant and given birth to a child, who is aged about two months. He has no objection, if the applicant is released on bail.

Learned counsel for the applicant undertakes to get marriage of the applicant with the victim registered, within two months. Considering the rival submissions and totality of facts & circumstances of the case, applicant is directed to be enlarged on interim bail for a period of two months.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy; 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. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail for the period of two months on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(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 him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse 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.

(vi) Applicant will get his marriage registered with the Registrar and produce the registration certificate before this court on the next date fixed.

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

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

List this case on 5.12.2023.

The applicant will file his affidavit of compliance by the next date fixed.

In failure to comply this order, the interim bail for the period of six months granted to the applicant shall stand cancelled and he shall be taken into custody forthwith. "

Learned counsel for applicant submits that subsequent to the order dated 3.10.2023, the parties have solemnized marriage and

thereafter, they have applied for registration of their marriage under the provisions of Uttar Pradesh Marriage Registration Rules 2017, which is pending before Registrar of Marriages. He, therefore, submits that since parties have solemnized marriage, as such, order dated 3.10.2023 passed by this Court stands substantially complied with.

Upon a query raised by the Court to the applicant and the prosecutrix as to whether they have solemnized marriage, they have answered in affirmative. As such, the criminality committed by applicant stands washed of. Apart from above, the prosecutrix is major as she is now said to be 19 years of age.

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 applicants, 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 applicants, accusation made coupled with the fact that prosecutrix and applicant have solemnized marriage, as such, the criminality committed by applicant stands washed of, learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicant during pendency of trial, the period of incarceration undergone, the clean antecedents of applicant but without making any comment on the merits of the case, 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 the bonds already executed by him 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.

The interim bail granted to applicant is made absolute.

Order Date :- 5.12.2023

Arshad