

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41102 of 2023

Applicant :- Sandeep Kumar

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

Counsel for Applicant :- Praveen Kumar Tripathi, Saroj Kashyap

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Saroj Kashyap, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Sandeep Kumar seeking his enlargement on bail in Case Crime No. 320 of 2022, under Sections 363, 366, 376, 504, 506 IPC and Sections 3/4 POCSO Act, 2012, P.S. Kashya, District Kushinagar, during the pendency of trial.

Perused the record.

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 4 on 20.9.2023. In spite of service of notice, no one has put in appearance on behalf of first informant opposite party 4 to oppose this application for bail.

Record shows that in respect of an incident, which is alleged to have occurred on 08.03.2022, a delayed F.I.R. dated 01.05.2022 was lodged by first informant Smt. Neelam Devi (mother of the prosecutrix) and was registered as Case Crime No. 320 of 2022, under Sections 363, 504, 506 IPC, P.S. Kashya, District Kushinagar. In the aforesaid F.I.R., three persons namely Sandeep Kumar (applicant herein), Chhaththoo Prasad and Panmati have been nominated as named accused.

At the very outset, the learned counsel for applicant submits that the prosecutrix has solemnized marriage with the applicant as is evident from the statement of the prosecutrix recorded under Section 164 Cr. P. C. As per the date of the birth of the prosecutrix i.e. 5.2.2006, the prosecutrix was aged about 16 years and 4 months on the date of her marriage with the applicant. However, 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 Hindu Marriage Act. Upto this stage, no proceedings has been initiated by the prosecutrix for cancellation of her marriage with the applicant.

Even otherwise applicant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in jail since 16.07.2023. As such, he has undergone more than 3 months of incarceration. The police report in terms of Section 173 (2) Cr. P. C. having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he 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 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, the learned counsel for first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the prosecutrix has solemnized the marriage with the applicant as is evident from the statement of the prosecutrix recorded under Section 164 Cr. P. C., as per the date of the birth of the prosecutrix i.e. 5.2.2006, the prosecutrix was aged about 16 years and 4 months, yet the marriage of the prosecutrix with the applicant shall not void, but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11 (2) of Hindu Marriage Act, upto this stage, no proceedings has been initiated by the prosecutrix for cancellation of her marriage with the applicant, the clean antecedents of the applicant, the period of incarceration undergone, the police report in terms of Section 173 (2) Cr. P. C. having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet the learned A.G.A. could not point out any such circumstance necessitating 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 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 **Sandeep Kumar** 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 :- 3.11.2023/HSM