

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42569 of 2023

Applicant :- Shravan Alias Chandan Rajbhar

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

Counsel for Applicant :- Kumar Parikshit, Kumar Gaurav

Counsel for Opposite Party :- G.A., Amit Kumar Singh, Dileep Kumar Gautam, Nitesh Vishwakarma, Rageeni

Hon'ble Rajeev Misra, J.

1. Heard Mr. Kumar Parikshit, the learned counsel for applicant, the learned A.G.A. for State and Mr. Nitesh Vishwakarma, the learned counsel representing first informant opposite party-2.

2. Perused the record.

3. This application for bail has been filed by applicant-**Shravan Alias Chandan Rajbhar** seeking his enlargement on bail in Case Crime No.374 of 2022, under Sections 363, 366, 376 I.P.C., and Section 5(j)(ii)/6 of POCSO Act, Police Station- Jalalpur, District- Jaunpur during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 01.12.2022, a delayed F.I.R. dated 04.12.2022 was lodged by first informant Geeta Devi (mother of the deceased) and was registered as Case Crime No.374 of 2022, under Sections 363, 366, 376 I.P.C., and Section 5(j)(ii)/6 of POCSO Act, Police Station- Jalalpur, District- Jaunpur. In the aforesaid F.I.R. applicant Shravan Alias Chandan Rajbhar has been nominated as solitary named accused.

5. Learned counsel for applicant submits that subsequent to the F.I.R. dated 04.12.2022, the prosecutrix has solemnized marriage with the applicant on 05.12.2022. From the aforesaid wedlock a male child was born on 04.09.2023. According to the learned counsel for applicant though prosecutrix was below 18 years of age on the date of her marriage with the applicant 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. He, therefore, contends that since applicant has solemnized marriage

with the prosecutrix, therefore, criminality, if any, committed by the applicant stands washed off.

6. 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 18.07.2023. As such, he has undergone more than 3 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, 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. 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 the trial.

7. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have opposed the prayer for bail. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

8. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made and complicity of accused coupled with the fact that though prosecutrix was below to 18 years of age on the date of her marriage with the applicant 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, out of aforementioned wedlock a male child was born on 04.09.2023, criminality if any committed by the applicant thus stands washed off, 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 crystallized, yet inspite of above, 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, applicant has made out a case for bail.

9. Accordingly, the bail application is **allowed**.

10. Let the applicant- **Shravan Alias Chandan Rajbhar**, be released on bail in aforesaid case crime number 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 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.

11. 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

Imtiyaz