

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43622 of 2023

Applicant :- Chhotu Urf Ravindra Seth

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

Counsel for Applicant :- Rajesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri J.P. Mishra, Advocate, filed his power today on behalf of the informant, which is taken on record.

2. Heard Sri Rajesh Kumar Tiwari, learned counsel for the applicant, Sri J.P. Mishra, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 546 of 2017, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Sarnath, District- Varanasi, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and according to the FIR, on 12.11.2017 applicant enticed away the daughter of the informant aged about 17 years.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and actually victim and applicant loved each other and victim according to her own wish had gone along with the applicant and also performed marriage with him.

6. He further submitted that during investigation, FIR of the present case was challenged by the applicant and arrest of the applicant was stayed by the Division Bench of this Court till submission of the report under Section 173(2) Cr.P.C. He further submitted that when victim i.e. wife of the applicant in her statement recorded under Section 164 Cr.P.C. stated in favour of the applicant then applicant was of the view that proceeding will be dropped and no charge-sheet will be filed against him but on the basis of Class-VI certificate of victim charge-sheet was submitted and only due to this reason, he could not appear before the court

concerned. He further submitted that when NBW was issued against him then he was arrested and thereafter he moved his bail application.

7. He further submitted that victim of the case is now wife of the applicant and she is residing in her matrimonial home i.e. home of the applicant and with the wedlock of the applicant, she also delivered a child. He further submitted that even victim of the case is the deponent in the present matter.

8. He further submitted that applicant is not having any criminal history.

9. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

10. Sri J.P. Mishra, learned counsel for the informant also conceded the fact that after marriage, victim and applicant were residing as husband and wife and still victim is in her matrimonial home i.e. in the house of the applicant and neither victim nor informant are having any objection, if applicant be enlarged on bail.

11. I have heard learned counsel for the parties and perused the record of the case.

12. Although, it appears that applicant could be brought before the trial court after several years but it appears that after performing marriage with the victim, he started living with her and therefore, the reason of non-appearance of the applicant given by learned counsel for the applicant appears to be probable.

13. Further, although, as per the school record, victim appears to be minor girl aged about 14-15 years but as per her ossification test report, she was around 18-19 years' old and she in her both the statements recorded during investigation stated that she according to her own wish had gone along with the applicant and also performed marriage with him.

14. Further, even today she is residing in her matrimonial home i.e. in the house of the applicant and she also delivered a child with the wedlock of the applicant and even neither victim nor informant are having any objection, if the applicant be enlarged on bail.

15. Therefore, considering the facts and circumstances of the case

discussed above, in my view applicant is entitled to be released on bail.

16. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

17. Let the applicant- **Chhotu Urf Ravindra Seth** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

18. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

19. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 12.10.2023

KK Patel