

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43684 of 2023

Applicant :- Brijesh

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

Counsel for Applicant :- Satya Prakash Singh

Counsel for Opposite Party :- G.A.,Anjali Jaiswal,Dhirendra Kumar Verma

Hon'ble Rajeev Misra,J.

Heard Mr. Geetam Singh, Advocate holding brief of Mr. Satya Prakash Singh, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This bail application has been filed by the applicant Brijesh seeking his enlargement on bail in Case Crime No. 396 of 2023, under Sections 376(3), 506, 363, 323 IPC and Section 5J(2)/6 PCOSO Act, P.S. Teelamod, District Ghaziabad during the pendency of trial.

Though the names of Miss Anjali Jaiswal and Mr. Dhirendra Kumar Verma have been duly published in the cause list as counsel for some of the respondents, yet, neither they nor any one on their behalf has appeared to oppose the application for bail.

Record shows that in respect of an incident which is alleged to have occurred on 30.6.2023, a delayed F.I.R. dated 7.7.2023 was lodged by first informant Yogendra Kumar (father of the prosecutrix) and was registered as Case Crime No. 396 of 2023, under Sections 376(3), 506, 363, 323 IPC and Section 5J(2)/6 PCOSO Act, P.S. Teelamod, District Trans Hindon, Commissionerate, Ghaziabad. In the aforesaid F.I.R., applicant Brijesh has been nominated as solitary named accused.

Learned counsel for applicant submits that applicant is a named as well as charge sheeted accused, inasmuch as charge sheet has been submitted against applicant on 2.8.2023, yet the applicant is liable to be enlarged on bail. Prosecutrix in her statement under Section 164 Cr. P. C. has clearly admitted that she has solemnized marriage with the applicant. Even though, the prosecutrix was below 18

years of age on the date of her marriage with applicant inasmuch as her date of birth recorded in the High School Certificate is 24.6.2008 and the marriage was solemnized on 23.5.2023, yet the marriage of the prosecutrix with the applicant shall not be void, but voidable at the instance of prosecutrix alone in view of provisions contained in Section 11 (2) of the Hindu Marriage Act. Upto this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void. Apart from above, there is delay in lodging the F.I.R. which remains unexplained upto this stage. The prosecutrix was aged about 16 years and 8 months on the date of occurrence and prima facie she is a consenting party. On account of co-habitation of the prosecutrix with the applicant, as she has solemnized marriage with applicant she has come in the family way. Subsequently, on account of some ulterior motive, present criminal proceedings have been engineered.

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 8.7.2023. 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 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. He submits that since applicant is a named/charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. 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 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 marriage with the applicant, as has been clearly admitted by her in her statement under Section 164 Cr. P. C., therefore, the criminality, if any, committed by the applicant stands washed out, though the prosecutrix was below 18 years of age on the date of her marriage with the applicant but simply on that ground that the

marriage of the prosecutrix with 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, no proceedings have been initiated by the prosecutrix for declaration of the marriage with the applicant as void, the clean antecedents of applicant, the period of incarceration undergone, 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 the 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 **Brijesh** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two heavy 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 :- 13.10.2023

HSM