

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48763 of 2023

Applicant :- Rajendra

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

Counsel for Applicant :- Sushil Kumar Pandey, Pratima Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that initially F.I.R. was lodged by the informant, who is father of the victim under Sections 363, 366 I.P.C., alleging therein that applicant had enticed away her minor daughter aged about 16 years. Learned counsel for the applicant further submits that when the victim was recovered her statement under Section 161 Cr.P.C. was recorded wherein she has stated that she is aged about 16 years, the applicant called her through mobile phone at Miteypur Pullia. Learned counsel for the applicant further submits that in her statement recorded under Section 164 Cr.P.C. the victim has alleged that on 27.07.2023 the applicant called him through phone to meet him, she went there, thereafter they both stayed in Hanuman Temple at Richhaura where they solemnized marriage and thereafter sexual relation made between them, thereafter in the next morning she went to her matrimonial house and thereafter police arrested them. Learned counsel for the applicant further submits that in her statement recorded under Section 164 Cr.P.C. the victim has also stated that she went with the applicant and made relations with the applicant on her own will. Learned counsel for the applicant further submits that the victim refused for her medical examination. Learned counsel for the applicant further submits that as per school leaving certificate the victim is aged about 16 years and since the victim has refused to get her medical examination conducted, taking benefit of two years either side she is major and the applicant has falsely been implicated in the case. Learned counsel for the applicant further submits that as per the statements of the victim recorded under Section 161 & 164 Cr.P.C. no allegation of rape has been made by

her against the applicant, she left her house on her own wishes on the date of incident and thereafter, she solemnized marriage with the applicant in a temple, where on her will physical relations were made between them, thus, victim is a consenting party. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 24.07.2023, having no criminal history.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Rajendra**, involved in Case Crime No. 313 of 2023, under Sections 363, 366, 376 I.P.C. read with Section 3/4 of Protection of Children From Sexual Offences Act and Section 9 of Prohibition of Child Marriage Act, Police Station Bisalpur, District Pilibhit, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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.

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

6. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

7. The bail application is **allowed**.

Order Date :- 16.11.2023

Mustaqeem.