

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45930 of 2023

Applicant :- Smt Shabnam

Opposite Party :- State of U.P.

Counsel for Applicant :- Aditya Gupta, Harsh Vardhan Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard Shri Aditya Gupta, learned counsel for the applicant, learned AGA and perused the record.

2. The FIR in question was lodged alleging that on the basis of a search carried out, six persons named in the FIR were searched and from the applicant, one baby aged about 5 days was recovered and on the basis of the said, coupled with the confessional statement that the child was being taken for being sold, the applicant was apprehended.

3. Learned counsel for the applicant draws my attention to the statement of the mother and father of the child who had stated that they had given the child out of their own freewill as they already had three daughters and the fourth daughter was born to them. In the light of the said submission, counsel for the applicant argues that no offence under Section 81 of Juvenile Justice Act can be said to be made out which prohibits sale or purchase of a child for any purpose, whereas in the present case, there is no allegation of either sale or purchase of the child and in fact, the statement of the parents of the child make it clear that they had given the baby out of their own freewill. The applicant has no criminal antecedent, is a lady and is in custody since 08.09.2023.

4. Learned AGA has opposed the bail application.

5. Considering the averments made in the FIR, *prima-facie*, the ingredients so as to attract offence under Section 363, 368, 370(4), 120B IPC & Section 81 of Juvenile Justice (Care and Protection of Children) Act cannot be said to be made out, however, the same is subject to evidence that may come at the time of trial. The applicant has no criminal antecedent and is in custody since 08.09.2023 and being a woman is also entitled to the benefit, as such, the applicant is entitled to be enlarged on bail. In view thereof, the application is ***allowed***.

6. Let the applicant ***Smt Shabnam*** be released on bail in FIR No.268 of 2023, under Section 363, 368, 370(4), 120B IPC &

Section 81 of Juvenile Justice (Care and Protection of Children) Act P.S. Mainather, District Moradabad on her furnishing a personal bond with two sureties of Rs.25,000/- each to the satisfaction of court concerned with the following conditions:

- (a) The applicant shall execute a bond to undertake to attend the hearings;
- (b) The applicant shall not commit any offence similar to the offence of which she is accused or suspected of the commission; and
- (c) The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

Order Date :- 31.10.2023
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