

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47544 of 2023

Applicant :- Dharmendra Singh

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

Counsel for Applicant :- Satyendra Pratap Singh, Shivam Singh

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. It has been argued by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that on 10.08.2023 an F.I.R. was lodged by the informant, who is father of the victim in unknown under Sections 363, 366 I.P.C., alleging therein that on 09.08.2023 at about 10:30 p.m. his minor daughter aged about 17 years has been enticed away by someone, his daughter also took Rs. 15,000/- and a golden chain. Learned counsel for the applicant further submits that during investigation the Investigating Officer recorded statement of complainant, wherein he has stated that on the date of incident when all the persons of his family along with his minor daughter (victim) went to sleep, then at about 10:30 his daughter-in-law told him that his minor daughter is not present in the house, on the next day a mobile call was received by his elder daughter where his minor daughter was telling and she said that she left her house on her own will. Learned counsel for the applicant further submits that mother of victim also repeated the same version of the statement made by the complainant in his statement. 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 has studied upto Class-V, she is aged about 17 years, on 06.01.2023 at about 1:00 a.m. she left her house and reached market, thereafter, she went to Palia and called the son of her Bua who left her at Pooranpur, thereafter, he called the applicant who told her to reach at Etawah, she loves the applicant, when she reached at Etawah applicant took her to his house where she lived with him, on 02.09.2023 she performed court marriage with the applicant and was living with the applicant as husband and wife, she wants to

live with the applicant. Learned counsel for the applicant further submits that the victim in her statement recorded under Section 164 Cr.P.C. has repeated the version of her earlier statement recorded under Section 161 Cr.P.C. with some modification that physical relations were made between them several times because they are husband and wife and she is wife of the applicant, she wants to live with her parents and she does not want to live with the applicant. The victim in her statement recorded under Section 164 Cr.P.C. has also stated that he informed son of her Bua through mobile phone three days prior to the date of incident that her elder sister who was married with Amarjeet seven months ago had died and her parents wants to marry her with Amarjeet and she does not want to marry there, therefore, she called herself the son of her Bua. Learned counsel for the applicant further submits that the victim denied 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 as her parents wants to marry her with Amarjeet, whose earlier wife, who was the elder sister of the victim, died earlier, and thereafter, she went Etawah and solemnized marriage with the applicant, 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 29.09.2023, 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-**Dharmendra Singh**, involved in Case Crime No. 270 of 2023, under Sections 363, 366, 376 I.P.C. and Section 3/4 of Protection of Children From Sexual Offences Act, Police Station Madhotanda, 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 :- 7.11.2023

Mustaqeem.