

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3889 of 2023

Applicant :- Dharmendra Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- Chetan Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Chetan Kumar Tiwari, learned counsel for the accused-applicant as well as Shri Rajneesh Kumar Verma, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Dharmendra Singh** on bail, who is involved in Case Crime No. 232 of 2022 under Sections 363, 366, 376 I.P.C & Section 5(J2)/6 Protection of Children from Sexual Offences, Act, 2012, Police Station Safipur, District Unnao.

3. This Court had earlier granted interim bail to the applicant vide order dated 26.05.2023, which is as follows:-

"1. Heard learned counsel for the applicant and Sri Rajesh Kumar Singh learned A.G.A.for the State.

2. This bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.232 of 2022 under Section 363, 366, 376 IPC and Section 5 (J2)/6 of Protection of Children from Sexual Offences Act, 2012 PS Safipur, district Unnao.

3. Learned counsel for the applicant has submitted that statement under Section 164 CrPC of the prosecutrix shows that the prosecutrix and the applicant have married and it is a case of consent. He has submitted that there is no ingredient of offence under Section 376 IPC made out against the applicant. However, as per school certificate the date of birth of the girl is 5.7.2005 and she will become major in July, 2023. It has been submitted that the applicant is ready to marry the applicant whenever she becomes majore in case she gives her consent and he will also file proof of marriage. He has submitted that the applicant has no criminal history and he is in Jail since 10.7.2022.

4. On the other hand, learned AGA has opposed the bail and submitted that it is a case of rape and bail application is liable to be rejected.

5. Considering the over all facts and circumstances of the case, it is a fit case for interim bail.

6. Let the applicant Dharmendra Singh be released on interim bail for three months in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the

satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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 of the Indian Penal Code.

(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. is issued and the 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 of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

7. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order."

4. Learned counsel for the applicant has submitted in paragraph-4 of bail application that the applicant and the prosecutrix have solemnised their marriage and are happily living together as husband and wife.

5. Learned A.G.A has opposed the prayer of bail of the applicant but has fairly conceded that the applicant and prosecutrix have performed marriage and are living together as husband and wife.

6. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that applicant has solemnised marriage with the prosecutrix and they both are living together as husband and wife, I find it to be a fit case for grant of regular bail.

7. Accordingly, the bail application is **allowed**.

8. Let the applicant **Dharmendra Singh** be released on regular bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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 her under Section 229-A of the Indian Penal Code.

(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. is issued and the 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 of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 28.11.2023

DiVYa/Rajneesh