

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6050 of 2023

Applicant :- Bhanu Yadav

Opposite Party :- State Of U.P. Thru. S.H.O. Kotwali Dehat, Gonda And Another

Counsel for Applicant :- Girdhari Lal Yadav

Counsel for Opposite Party :- G.A., Arjun Singh Kalhans

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Asif Khan, learned A.G.A. for the State and Sri Arjun Singh Kalhans, learned counsel for complainant and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.632 of 2022 under Section 376 IPC, PS Kotwali Dehat, district Gonda.

3. This Court granted interim bail for a period of three months on 08.05.2023 and detailed order has been passed which runs as under:-

"Vakalatnama filed by Shri Arun Singh Kalhans, Advocate on behalf of complainant is taken on record.

Heard learned counsel for the applicant, learned AGA for the State and learned counsel for the complainant and perused the record.

The present bail application has been filed by the applicant Bhanu Yadav, with a prayer to enlarge him on bail in Case Crime No.632 of 2022, under Section 376 I.P.C., Police Station Kotwali, District Gonda.

It is contended by learned counsel for the applicant that the marriage between the applicant and the prosecutr^x was settled. Hwoever, due to misunderstanding, the marriage could not be performed. But on the pretext of marriage, sexual relations were made by the applicant with the prosecutrix. Thereafter, FIR was lodged. Learned counsel contended that the applicant has not committed any crime rather it is a case of consent and no offence under Section 376 IPC is made out. Learned counsel contended that the applicant is ready to marry the prosecutrix as such he may be enlarged on bail. The applicant has no criminal history. The applicant is in jail since 30.03.2023.

Learned AGA as well as learned counsel for the complainant have opposed the prayer for bail and contended that the applicant has committed rape therefore, he deserves no mercy and his bail is liable to be rejected.

Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the fact that prosecutrix being major and is a consenting party, and the applicant is ready to marry the prosecutrix, in my opinion, the applicant may be granted interim bail for three months.

Let the applicant, Bhanu Yadav, 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.

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.

It is expected that the applicant will marry the prosecutrix within three months. and in case he does not marry the prosecutrix, the interim bail granted to the applicant would be cancelled on the next date."

4. Learned counsel for the applicant has submitted that after release from jail, the marriage has been performed between the applicant and the prosecutrix and marriage card has been annexed as Annexure No.2, which indicates that marriage was performed on 23.06.2023 as per Hindu rituals. He has submitted that after marriage the applicant and the prosecutrix are residing as husband and wife. He has further submitted that the applicant has no other criminal history.

5. Learned A.G.A. though opposed the prayer for bail but could not dispute the aforesaid fact.

6. Learned counsel the complainant has also no objection.

7. Considering overall facts and circumstances of the case, the argument that the applicant and the prosecutrix are residing as husband and wife, it is a fit case for bail.

8. Let the applicant, **Bhanu Yadav** be released on 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 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.

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 :- 6.11.2023

Renu/-