

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6300 of 2023

Applicant :- Chhotu

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

Counsel for Applicant :- Rajesh Kumar Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Rajesh Kumar Awasthi, learned counsel for the applicant, Shri Mukesh Singh, learned AGA for the State and perused the record. Though notice has been served sufficiently on opposite party no.2 but nobody is present.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.425 of 2022, under Sections 323, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Kaisarganj, District Bahraich.
3. Learned counsel for the applicant has invited attention of this Court towards the statement of the prosecutrix recorded under Section 164 Cr.P.C. in which she has deposed before the Court that she was 18 years of age at the relevant time and prior to eight months, she was enticed away by one Rajendra and she married him. Thereafter, she was recovered and after recovery, she was married with present applicant and she had gone to his house and he established physical relations against her will. She further deposed that now she want to live with Rajendra with whom earlier she had run away from her house.
4. Learned counsel submitted that it is a case of consent and not a case of rape. The prosecutrix is 16 to 17 years as per ossification test and it is submitted that benefit of upper age limit of two years may be extended and it may be inferred that the prosecutrix was major at the relevant time. He further stated that it is admitted in the statement under Section 164 Cr.P.C. that she was married with applicant, thus no ingredients of Section 375 IPC is seen in the present case. The applicant has no criminal history. The applicant is in jail since 13.03.2023.
5. Learned AGA opposed the prayer for bail and submitted that the statement of prosecutrix under Section 164 Cr.P.C. indicates that physical relation was established against will of the prosecutrix as such the applicant is not entitled to be released on bail.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering argument of consent, argument that statement of prosecutrix under Section 164 Cr.P.C. indicates that prosecutrix was married with the applicant as such I find it to be a fit case for grant of bail.

7. Let the applicant **Chhotu**, 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.

8. 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 :- 30.11.2023

Pks