

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14312 of 2021

Applicant :- Abdulla

Opposite Party :- State Of U.P. Thru Prin.Secy. Home Lucknow

Counsel for Applicant :- Mohd.Imran Khan,Ajeet Pratap Singh,Arun Kumar,Nisha Srivastava,Rakesh Kumar,Syed Mohd. Afzal,Syed Mohd. Kasif,Zia Ul Qayum

Counsel for Opposite Party :- G.A.,Ram Kishor

Hon'ble Brij Raj Singh,J.

1. Case called out. None is present for the complainant.
2. Supplementary affidavit filed on behalf of the applicant is taken on record.
3. Heard learned counsel for the applicant, Sri Avishesh Kumar Singh, learned A.G.A for the State and perused the record.
4. The present first bail application has been filed for bail in Case Crime No.70 of 2021, under Sections 376-D, 506 I.P.C. and Section 67-A of Information Technology (Amendment) Act, 2008, Police Station Indira Nagar, District Lucknow.
5. Learned counsel for the applicant has invited attention of this Court towards the statement of prosecutrix under Section 164 CrPC which indicates that prosecutrix has deposed before the Court that she used to like the applicant and out of her freewill, physical relation was established. She has further deposed that the applicant had promised to marry her but later on, marriage was not performed by him.
6. While hearing this case, this Court had passed order on 7.8.2023 and called the prosecutrix to appear and state whether there was any possibility of marriage between the prosecutrix and the applicant, and the case was fixed for 9.8.2023.
7. In compliance of order of this Court dated 7.8.2023, the prosecutrix appeared before the Court on 9.8.2023 and she stated before the Court that she was ready to marry the applicant and on this ground, interim bail was granted by this Court on 9.8.2023 with the condition that the applicant will file proof of marriage on the next date.

8. Today, the supplementary affidavit has been filed on behalf of the applicant and certificate of registration of marriage is annexed and it has been mentioned that Nikah has also been performed between the applicant and the prosecutrix on 16.9.2023 which is annexed as Annexure No.SA-1 to the supplementary affidavit filed today. Learned counsel for the applicant has submitted that prosecutrix is living as wife in the house of the applicant and the dispute between them is settled. It has been further submitted that at the relevant time, the age of prosecutrix was 23 years and she was major. Learned counsel for the applicant has submitted that the applicant is in Jail since 15.3.2021.

9. On the other hand, learned AGA opposed the prayer for bail but could not dispute the fact that the applicant and the prosecutrix are living as husband and wife and marriage has been performed between them.

10. Considering over all facts and circumstances of the case, the argument that the statement under Section 164 CrPC, of the prosecutrix, does not indicate that rape has been committed, the argument that the matter has been settled between the prosecutrix and the applicant, they have performed marriage each other and they are living as husband and wife, it is a fit case for bail.

11. Let the applicant Abdulla 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.

12. 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 :- 18.10.2023
Rajneesh JR-PS)