

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7479 of 2023

Applicant :- Lalit Singh

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

Counsel for Applicant :- Kaviya Singh, Manoj Kumar, Prashant Kumar Singh

Counsel for Opposite Party :- G.A., Vivek Kumar Divedi

Hon'ble Brij Raj Singh, J.

1. In compliance of order dated 20.11.2023, the prosecutrix has appeared along with Lady Constable Ms. Subhash Kumari and S.I. Suresh Kumar Tripathi of Police Station Bilgram District Hardoi before this Court. On asking whether she want to marry the applicant, she refused to marry with applicant

2. Heard Sri Prashant Kumar Singh, learned counsel for the applicant, Sri Vivek Kumar Divedi, learned counsel for the complainant and Sri G.D. Bhutt learned A.G.A.-I for the State.

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.42 of 2023 under sections 366, 376, 363 IPC and 5 (j) (ii)/6 POCSO Act, Police Station Bilgram, District Hardoi.

4. It has been submitted by learned counsel for the applicant that in the statement under section 164 Cr.P.C., the prosecutrix has deposed before the court that out of her free will she had gone to Lucknow alongwith the applicant and she performed her marriage on 16.01.2023 in a temple. She further deposed before the court that that physical relation was established out of her free will. Learned counsel for the applicant has further submitted that it has been mentioned in the counter affidavit filed by the State that as per radio-logical report the age of the prosecutrix is 17 years. It has been submitted that two years upper age benefit may be extended and it may be inferred that the prosecutrix was major at the relevant time. He has submitted that as per Adhar Card, the age of prosecutrix is 21 years and as per version of the FIR

lodged by the mother, the age of the prosecutrix is 18 years. Learned counsel for the applicant has also annexed the Certificate of Registration of Marriage issued by the Registrar and the date of birth of the prosecutrix is shown in the Marriage Certificate 01.01.2002. It has been submitted that it is case of consent and physical relation was established out of her free will. The applicant is in jail since 11.02.2023.

5. On the other hand, Sri Vivek Kumar Divedi, learned counsel for the complainant has opposed the bail and has submitted that as per radio-logical report, the age of the prosecutrix is below 18 years and her consent has no meaning and physical relation comes within the purview of rape, as such the bail application of the applicant is liable to be rejected. Learned A.G.A. has opposed the prayer for bail.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument of consent, the argument that statement of the prosecutrix recorded under section 164 Cr.P.C. does not support the prosecution case and the argument that marriage was performed between the applicant and the prosecutrix on the basis of date of birth recorded in the Aadhar Card, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Lalit Singh**, 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.

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

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