

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8348 of 2022

Applicant :- Ranjeet Kumar Kashyap S/O Late Murali Kashyap (Second Bail)

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

Counsel for Applicant :- Vidya Kant Sharma

Counsel for Opposite Party :- G.A.,Prem Kumar Singh

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Rajneesh Kumar Verma, learned A.G.A. for the State and perused record.
2. This is second bail application in Case Crime No.144 of 2019 under Section 363/376/506 IPC and Section 3/4 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), Section 3 (2) (V) of SC/ST Act, PS Bajar Khala, district Lucknow.
3. Learned counsel for the applicant has submitted that first application for bail has been rejected by this Court on 8.7.2021 in Crl. Misc. Bail Application No.6680 of 2020. He has submitted that after rejection of first bail application, new cause of action has arisen for the reason that prosecutrix has been examined before the Trial Court after rejection of first bail application, therefore, the present second bail application has been filed.
4. This Court had passed following detailed order on 19.5.2023 in the present second bail application while granting interim bail to the applicant:-

"1. Supplementary affidavit filed by the learned counsel for the applicant is taken on record.

2. Heard learned counsel for the applicant, Sri P. K. Singh Advocate who has filed power on behalf of the victim and Dr. Gyan Singh learned A.G.A. for the State.

3. The first bail application was rejected by Hon'ble Mr. Justice Mohd. Faiz Alam, J. on 8.7.2021 in Crl. Misc. Bail No.6680 of 2020. The case has been released. By the order 15.5.2023 of Hon'ble the Chief Justice, the case is listed before the Regular Bench.

4. Learned counsel for the applicant has submitted that new cause of action has arisen therefore, this second bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.144 of 2019 under Section 363/376/506 IPC and Section 3/4 POCSO Act, Section 3 (2) (V) of SC/ST Act, PS Bajar Khala, district Lucknow.

5. Learned counsel for the applicant has submitted that the prosecutrix has been examined before the Trial Court. She has deposed before the Court that she had gone to the house of the applicant and sister of the applicant used to feed her. Thereafter, out of her freewill she had gone to Hardwar. She has further stated that on the pressure created by the family member, she lodged report and levelled allegation of rape against the applicant. He has submitted that as per school certificate, the date of birth of the prosecutrix is 20.2.2002 and at the relevant time, she was minor and now, she has become major. He has submitted that the applicant is ready to marry with the prosecutrix and he has requested that he may be granted bail.

6. Sri P.K. Singh learned counsel for the victim has submitted that his client is also ready to marry with the applicant and wants to go to his house.

7. Learned AGA has opposed the bail and has submitted that the crime has been committed and the bail application is liable to be rejected.

8. Considering the over all facts and circumstances of the case, I grant interim bail for three months to the accused Ranjeet Kumar Kashyap.

9. Let the applicant Ranjeet Kumar Kashyap 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."

5. While granting interim bail, this Court directed that applicant will file proof of marriage. Supplementary affidavit has been filed on 10.8.2023 and in para-3 of the supplementary affidavit it is stated that prosecutrix and applicant have married on 23.6.2023 and they are living together as wife and husband. The marriage card and photographs have been filed along with the supplementary affidavit.

6. Learned counsel for the applicant has further submitted that PW-2 prosecutrix Anshu has also been examined before the Trial Court and her statement before the Trial Court indicates that she is consenting party and in her cross-examination, she has admitted that the prosecutrix PW-5 Puja was outside from the house and she was inside and physical relation was established by the applicant.

7. On the other hand, Sri P.K. Singh has put in appearance for prosecutrix and he has also stated that the marriage has been performed between the applicant and the prosecutrix and they are living as husband and wife and he is not opposing the bail.

8. Learned A.G.A. has opposed the bail but could not dispute the fact that the applicant and prosecutrix have performed marriage and are living together as husband and wife.

9. Considering over all facts and circumstances of the case, the argument that the applicant and prosecutrix have performed marriage and are living together as husband and wife and the argument that it is a case of consent, it is a fit case for bail.

109. Let the applicant, Ranjeet Kumar Kashyap 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.

11. 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 :- 12.12.2023

Rajneesh JR-PS)