

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10244 of 2022

Applicant :- Ashish Alias Chhotkau

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

Counsel for Applicant :- Anil Kumar Awasthi,Dheeraj Awasthi

Counsel for Opposite Party :- G.A.,Shiv Bahadur Mishra,Subhash Chandra Yadav

Hon'ble Dinesh Kumar Singh,J.

1. Heard learned counsel for the accused-applicant, learned Additional Government Advocate, Mr. Rao Narendra Singh, as well as learned counsel for the complainant, Mr. Subhash Chandra Yadav and gone through the entire record.
2. By means of this application under Section 439 CrPC, the accused-applicant seeks bail in FIR No.0153 of 2022, under Sections 363, 366, 376, 323 and 506 IPC read with Section 3/4 The Protection of Children from Sexual Offences Act and Sections 3(2)5 SC/ST Act, lodged at Police Station Maurawan, District Unnao.
3. The FIR in question came to be registered on a complaint of mother of the prosecutrix, alleging therein that the accused-applicant had enticed away the prosecutrix, aged around 17 years; the accused-applicant is also a young-man of 19-20 years of age.
4. It appears that the accused-applicant and the prosecutrix performed marriage in an *Arya Samaj Mandir* and thereafter they fled away. Medical age of the prosecutrix has been determined to be 17 years, and it is well settled law that there can be a margin of plus/minus two years on either side of the age medically determined. The accused-applicant is said to have been languishing in jail since 25.06.2022.
5. Learned counsel for the accused-applicant submits that the accused-applicant has performed marriage with the prosecutrix, and he would keep her as his wife, if he is enlarged on bail.
6. Mr. Subhash Chandra Yadav, learned counsel for the complainant, has opposed the bail application, however, he has not disputed the fact of marriage of the accused-applicant with

the prosecutrix before an *Arya Samaj Mandir* except that the prosecutrix was minor. Mr. Rao Narendra Singh, learned Additional Government Advocate, has also opposed the bail application.

7. Considering the fact that the accused-applicant and the prosecutrix have performed the marriage, and thereafter they fled away to Gujarat and lived there together around 28 days, this Court deems it appropriate to enlarge the accused-applicant on bail.

6. Let applicant-**Ashish alias Chhotkau**, accused of above-mentioned FIR/crime number, be released on bail on **his** furnishing a personal bond and two local and reliable sureties each in the like amount to the satisfaction of the Court concerned with the following conditions, which are imposed in the interest of justice:-

*(i) the applicant(s) 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(s) 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(s) misuse(s) the liberty of bail and in order to secure **his** presence proclamation under Section 82 Cr.P.C. is issued and the applicant(s) fail(s) 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; and*

*(iv) the applicant(s) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of **his** bail and proceed against **him** in accordance with law.*

[D.K. SINGH, J]

Order Date :- 19.6.2023

MVS/-