

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10471 of 2022

Applicant :- Nitesh Kumar

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

Counsel for Applicant :- Piyush Kumar Singh, Ashok Kumar Singh

Counsel for Opposite Party :- G.A., Vinay Kumar Verma, Vinay Kumar Yadav

Hon'ble Brij Raj Singh, J.

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

2. Heard Shri Ashok Kumar Singh, learned counsel for the accused-applicant, Shri Nitesh Kumar, Advocate holding brief of Shri Vinay Kumar Yadav, learned counsel for complainant as well as Shri Avishesh Singh, learned A.G.A. for the State and perused the record.

3. This bail application has been filed seeking release of the accused/applicant **Nitesh Kumar** on bail, who is involved in Case Crime No. 118 of 2022 under Sections 376, 313, 323, 504, 506 I.P.C & Section 5/6 Protection of Children from Sexual Offences, Act, 2012, & Section 3(2) SC/ST Act, Police Station- Purwa, District- Unnao.

4. This Court had earlier granted interim bail to the applicant vide order dated 20.04.2023, which is as follows:-

" Objection filed by opposite party no. 2 is taken on record.

Heard learned counsel for the accused-applicant, learned counsel for the informant/complainant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant Nitesh Kumar for grant of bail, who is involved in Case Crime No. 0118 of 2022, under Sections 376, 313, 323, 504, 506 I.P.C., Section 5/6 of the Protection of Children from Sexual Offences Act, 2012, and Section 3(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Purwa, District Unnao.

Learned counsel for the applicant has drawn attention of the Court towards the statement of the prosecutrix recorded under Section 164 Cr.P.C in which she has stated that she was in love with the applicant and physical relation was established between the prosecutrix and the applicant.

Learned counsel for the applicant submitted that the in the month of June, 2021, the prosecutrix had gone to Shantinagar, Unnao and lived there. It is further submitted by the counsel for the complainant that

the marriage between the applicant and prosecutrix was performed in the police station. However, the statement recorded under Section 164 Cr.P.C. was recorded only for the reason that at the relevant time, the girl was minor. As per school certificate, the date of birth of the prosecutrix is 25.11.2004, now she has become major. Learned counsel for the applicant has submitted that the applicant wants to marry the prosecutrix and keep her as his wife.

Learned counsel for the applicant further submitted that since the prosecutrix has become major and the applicant is ready to keep her as wife, therefore, the applicant may be enlarged on bail. There is no criminal history against the applicant and he is in jail since 11.06.2022.

Learned counsel for the opposite party no. 2 in his counter affidavit has submitted that the applicant was not ready to take the prosecutrix at the relevant time and now she is ready to go in case the applicant takes her along with him and keep her as his wife.

Learned A.G.A. has, however, opposed the prayer for grant of bail and has submitted that the applicant does not deserve mercy of the Court and thus, the bail application of the applicant is liable to be rejected.

Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, as well as the fact that the prosecutrix is willing to live with the applicant as his wife, I grant four months' interim bail to the applicant.

The applicant is granted interim bail of four months. "

5. In compliance of the order dated 20.04.2023, the prosecutrix and the applicant have solemnised marriage and are happily living together as husband and wife. Learned counsel for applicant has annexed the marriage registration certificate along with the supplementary affidavit filed today before the Court.

6. Both learned A.G.A for the State as well as learned counsel for complainant have opposed the prayer of bail of the applicant, but have fairly conceded that the applicant and prosecutrix have performed marriage and are living together as husband and wife.

7. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that it is a case of consent, the argument that the applicant has no previous criminal history, the argument that applicant has solemnised marriage with the prosecutrix and they both are living together as husband and wife, I find it to be a fit case for grant of regular bail.

8. Accordingly, the bail application is **allowed**.

9. Let the applicant **Nitesh Kumar** be released on regular 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 her 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.

10. 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 :- 15.12.2023

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