

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9683 of 2023

Applicant :- Ram Bhawan

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

Counsel for Applicant :- Vaibhav Chauhan, Devanshu Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Supplementary counter affidavit filed on behalf of the State is taken on record.
2. In pursuance of earlier order dated 16.10.2023 passed by this Court, Sri Devendra Singh Investigating Officer is present in Court. The personal appearance of the Investigating Officer is exempted.
3. Notice has been served upon opposite party no.2 a copy of which has been Annexed as Annexure no. CA-1 to the counter affidavit dated 06.08.2023. However, none has appeared on behalf of the opposite party no. 2 to press the present bail application.
4. Heard Sri Sagar Singh holding brief of Sri Vaibhav Chauhan, learned counsel for the applicant and Sri Ran Vijay Singh, learned A.G.A. for the State.
5. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.103 of 2023 under sections 363, 366, 376 IPC and section 5 J (2)/6 POCSO Act, Police Station Rudauli District Ayodhya.
6. It has been submitted by learned counsel for the applicant that father of the prosecutrix lodged FIR, making allegation that the applicant has enticed his daughter, who was aged about 17 years at the relevant time. Learned counsel for the applicant has invited attention of this Court towards the statement of the prosecutrix recorded under section 164 Cr.P.C. in which she deposed that she was in love with the applicant and she had gone to Delhi out of her own free will with the applicant thereafter marriage

was performed between them. Learned counsel for the applicant has submitted that the age determination was not done that is why this Court had passed an order for ossification test and the report has come alongwith supplementary counter affidavit and as per the ossification report, the age of the prosecutrix is 18 years. Learned counsel for the applicant has submitted that it is case of consent. Though, as per the School Certificate, the date of birth of the prosecutrix is 10.05.2006 as such the age of the prosecutrix is below 18 years. However, the ossification report indicates that she is major. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 01.04.2023.

7. Learned A.G.A. though opposed the prayer for bail but could not dispute the aforesaid facts.

8. 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 that as per the ossification report, the prosecutrix is aged about 18 years and she is major, the argument that 164 Cr.P.C. of the prosecutrix is not supporting the prosecution case and it is a case of consent, therefore, I am of the opinion that the applicant is entitled to be released on bail.

9. Let the applicant, namely, **Ram Bhawan**, 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 :- 28.10.2023

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