

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10036 of 2023

Applicant :- Arun

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Amethi
And 2 Others

Counsel for Applicant :- Uma Kant Gupta

Counsel for Opposite Party :- G.A.,Anil Kumar Tiwari,Ujjawal Tewari

Hon'ble Mrs. Jyotsna Sharma,J.

01. Heard Shri Uma Kant Gupta, learned counsel for applicant and Sri Ravish Chandra Mishra, learned A.G.A. for the State.

02. The present bail application has been filed by the applicant seeking bail in case crime no.07 of 2022, under Sections 363, 366, 376, 323, 504 and 506 and 3/4 Protection of Children from Sexual Offences Act, P.S. Inhauna, District Amethi.

03. As per version of the F.I.R. lodged by father of the victim, his 13 years old minor daughter was enticed away by two persons named in the F.I.R., one of them is the present applicant. He has been searching for her and later on came to know about the involvement of the applicant and also fact that he took her away to Ahmadabad, Gujrat

04. The applicant submits that in this case the incident allegedly happened on 17.09.2022 but F.I.R. under Sections 363 and 366 I.P.C. has been lodged after a delay of about two months on 18.11.2022. He further submits that the real story is quite different. The I.O. himself has mentioned in the case diary itself that both sides were engaged in marriage negotiations and that as per the traditions prevalent in the community, to which both sides belong, the accused acceded to a demand of Rs.5 lac for solemnization of marriage of first informant's daughter with the applicant, later on the deal could not work out and when the victim's father demanded rest of the money, accused could not fulfill the demand. Therefore, the first informant refused to marry her daughter with the applicant and lodged the F.I.R. On the basis of the above facts coming in the investigation the applicant contends that there is no truth in the F.I.R. and that the F.I.R. has been lodged after soliciting legal advice with a motive to exploit the defence side.

05. Learned A.G.A. opposes the grant of bail and submits that the victim, who was found merely 16 years of age in the medical examination, has given statements against the applicant imputing allegations of sexual assault and rape. However, it is not denied that the applicant is in custody since 16.04.2023. Further not denied that no external injury was found in the medical examination and that she in her statement under Section 161 Cr.P.C. said that she was made to go through the 'court marriage' albeit under compulsion.

06. I went through all the material on record and considered the submission of both the sides including the submission that there is delay of two months in lodging the F.I.R., medico legal examination, her

statements recorded during investigation and a number of other facts. In my view, a case for bail is made out.

07. Let applicant -**Arun** be released on bail in the aforesaid Case Crime Number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not temper with evidence/witnesses.

(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) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) framing of charge and (ii) recording of statement under Section 313 Cr.P.C. without exception.

08. 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 :- 16.11.2023

Asha