

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12401 of 2022

Applicant :- Anuj Kumar Alias Anuj Kumar Gautam

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Secrett. Lucknow U.P.

Counsel for Applicant :- Vivek Chandra, Lalji Prasad Shukla, Vivek Chandra

Counsel for Opposite Party :- G.A., Rizwanul Haque Ansari, Rizwanul

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Rizwanul Haque, learned counsel for the complainant and Sri Ravish Chandra Mishra, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.717 of 2022 under section 366, 376, 342, 323, 506 IPC, Police Station Kotwali Sadar, District Lakhimpur Kheri.

3. This Court passed detailed order dated 16.05.2023 by which an interim bail was granted to the applicant, the same is quoted below :-

"1. Sri Rizwanul Haque has filed his power on behalf of the complainant which is taken on record.

2. Heard learned counsel for the applicant, Sri Rizwanul Haque learned counsel for the complainant and Sri Rajesh Kumar Singh learned A.G.A.-I for the State.

3. Today, the prosecutrix has been brought before me and she is being identified by Sri Rizwanul Haque learned counsel for the complainant. On asking whether she wants to go with the applicant and wants to marry with the applicant, she has deposed that she is ready to marry with the applicant. Learned counsel for the complainant has submitted that the prosecutrix is ready to live with the applicant.

4. This bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime

5. Learned counsel for the applicant has invited attention of this Court towards statement under Section 164 CrPC in which the prosecutrix has admitted that she had gone along with the applicant and lived in Lucknow and Kanpur for one month and physical relation was made between the applicant and her. It has been submitted that the prosecutrix was major at the relevant time and it is a case of consent. He has submitted that the applicant is ready to marry with the prosecutrix and keep her as his wife. He has submitted that the applicant has no criminal history and he is in Jail since 26.8.2022.

6. On the other hand, learned AGA has opposed the bail and submitted that crime has been committed and bail application is liable to be rejected.

7. Considering the over all facts and circumstances of the case, the statement that the applicant is ready to marry the prosecutrix and keep her as his wife, it is a fit case for interim bail.

8. Let the applicant Anuj Kumar @ Anuj Kumar Gautam be released on interim bail for three months from the date of his release from Jail 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."

4. This Court, while granting the bail has also observed that the applicant had given statement that he will marry with the prosecutrix and keep her as his wife.

5. Learned counsel for the applicant has filed marriage photographs which have been annexed as Annexure no.SA-1 to the supplementary affidavit dated 05.09.2023. The photographs show that the applicant and prosecutrix have performed their marriage.

6. Learned counsel for the applicant has further submitted that the statement of prosecutrix (P.W.-2) has been recorded before the trial court and in the cross-examination she has not supported the prosecution case and she has also admitted that she has performed marriage with the applicant and residing with him as wife. 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 26.08.2022.

7. Sri Rizwanul Haque, learned counsel for the complainant/opposite party no.2 has no objection.

8. Learned A.G.A. though opposed the prayer for bail but could not dispute the fact that prosecutrix (P.W.-2) has not supported the prosecution case before the trial court..

9. 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 the applicant and prosecutrix are living as husband and wife and the argument that the prosecutrix (P.W.-2) has not supported the prosecution case and she has admitted in her cross-examination that she is living in the house of the applicant as wife, therefore, I am of the opinion that the applicant is entitled to be released on bail.

10. Let the applicant, namely, **Anuj Kumar Alias Anuj Kumar Gautam**, 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 :- 30.10.2023

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