

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11697 of 2023

Applicant :- Vimal Chauhan

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

Counsel for Applicant :- Firoz Ahmad Khan

Counsel for Opposite Party :- G.A.,Mohd.Imran Khan

Hon'ble Brij Raj Singh,J.

1. Supplementary affidavit filed by the applicant is taken on record.

2. Heard Shri Firoz Ahmad Khan, learned counsel for the applicant, Ms. Tanvi Jain, learned AGA for the State and Shri Manmohan Singh, learned counsel for the complainant and perused the record.

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.468 of 2022, under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Poora Kalandar, District Ayodhya.

4. This Court has passed the following order while granting interim bail to the applicant on 27.09.2023. The relevant portion is quoted hereinbelow:

" 4. 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 has stated that she was 20 years of age and she was in love with the applicant but her mother was not ready to marry her with the applicant, so she had married with the applicant in a temple and thereafter she had gone to Delhi and lived there with the applicant for nine months. Learned counsel for the applicant has submitted though as per School Certificate the date of birth of the prosecutrix is 10.02.2005 and at the relevant time she was minor but now she has become major. Learned counsel for the applicant has submitted that the prosecutrix is pregnant. Learned counsel for the applicant has submitted that the applicant is ready to marry with the prosecutrix as she has become major, therefore, the applicant may be released on interim bail. The applicant has no criminal history and he is in jail since 22.06.2023.

5. Learned counsel for the respondent no.2 has filed short counter affidavit and in para 8 it has been mentioned that opposite party no.2/mother of the victim has stated that she has no objection if the applicant may be enlarged on bail and in Para-7 of the short counter affidavit it has been mentioned that the applicant and daughter of the informant have solemnized marriage and she is carrying a pregnancy at the advanced stage.

6. Learned A.G.A. has no objection if the applicant wants to marry with the prosecutrix.

7. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall fact that prosecutrix and applicant both are ready to marry , in my opinion, the applicant may be granted interim bail for three months.

8. List this case on 22.12.2023.

9. It is expected that the applicant will file proof of marriage alongwith an affidavit

within three months and in case he does not marry the prosecutrix, the interim bail granted to the applicant may be cancelled on the next date."

5. In compliance of the order passed by this Court, the marriage had been performed between the applicant and prosecutrix and applicant has filed marriage certificate along with supplementary affidavit filed today in which it is mentioned that victim and applicant are residing as wife and husband. The applicant has no criminal history and is in jail since 07.06.2023.

6. Learned AGA as well as learned counsel for the complainant has no objection if the marriage has been performed between the applicant and prosecutrix.

7. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering the argument that earlier it was a case of consent and now marriage has been performed between applicant and prosecutrix, argument that both are living as husband and wife, as such the applicant is also entitled to be released on bail.

8. Let the applicant **Vimal Chauhan** 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.

9. 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 :- 22.12.2023

Pks