

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11897 of 2023

Applicant :- Shakeel Shekh

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

Counsel for Applicant :- Salik Ram Tiwari, Sanjeev Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri G.D. Bhatt, learned A.G.A. for the State and perused record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.121 of 2022 under Section 363, 366, 376 IPC and 5 (j) (ii)/6 of POCSO Act, PS Raniganj, district Pratapgarh.
3. In compliance of order of this Court dated 5.10.2023, the prosecutrix has been produced before this Court by the Lady Constable Ms. Divya and Sub-Inspector Sri Ajit Kumar Singh, both of PS Raniganj, district Pratapgarh.
4. The personal appearance of the Lady Constable Ms. Divya and Sub-Inspector Sri Ajit Kumar Singh, both of PS Raniganj, district Pratapgarh is exempted.
5. On asking whether she is ready to marry the applicant, she has submitted that she has already married to applicant.
6. Learned counsel for the applicant has invited attention of this Court towards the statement of prosecutrix under Section 164 CrPC in which she has deposed that out of her freewill she had gone along with the applicant and also she had performed marriage with the applicant. She has further deposed before the Court that she was not abducted by the applicant. She has further deposed that a child was born out of wedlock and at present, she is living in the house of the applicant with his family members.
7. Learned counsel for the applicant has submitted that there is no purpose to keep the applicant in Jail as the prosecutrix is residing in the house of the applicant along with his family members and the applicant is ready to accept the prosecutrix as his wife. He has further submitted that the applicant has no criminal history and he is in jail since 16.12.2022.
8. On the other hand, learned A.G.A. opposed the prayer for bail but could not dispute the fact that under Section 164 CrPC statement, the prosecutrix is not supporting the prosecution case.

9. Considering the over all facts and circumstances of the case, the argument that the applicant and the prosecutrix have already performed marriage and the prosecutrix is major, and she is living in the house of the applicant with his family members and had given birth to a child out of the wedlock, it is a fit case for bail.

10. Let the applicant, namely, Shakeel Shekh 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.

11. 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
Rajneesh JR-PS)