

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12162 of 2023

Applicant :- Javed Akhtar @ Hasaruddin

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

Counsel for Applicant :- Prashant Kumar Mishra, Dileep Kumar Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Ms. Archana Rawat, Advocate, holding brief of Sri Dileep Kumar Pathak, learned counsel for the applicant and learned A.G.A. for the State.

2. This bail application has been filed by the applicant seeking bail in Case Crime No. 51 of 2022 under sections 363, 376, 419, 420, 467, 468, 471 I.P.C and section 3/4 P.O.C.S.O. Act, P.S.- Kaiserganj, District- Bahraich.

3. As per the version of the F.I.R., minor daughter of first informant, aged about 16 years was kidnapped by the applicant Javed Akhtar at about 8 - 9 in the evening on 17.02.2022. It is alleged in the F.I.R. that the accused Javed Akhtar was Imam at a local mosque and was teaching the children of the locality on religious matters. At the time of incident, cash of Rs. 5,000/- and golden jewellery of wife of the first informant were also taken away. Since the time of the incident, the accused had switched off his phone and his family members evaded to talk about his whereabouts.

4. On the basis of the above facts, an F.I.R. Case Crime No. 51 of 2022 under section 363 I.P.C. was lodged and investigated upon. After completion of investigation, a charge sheet under sections 363, 376, 419, 420, 467, 468, 471 I.P.C and section 3/4 P.O.C.S.O. Act, has been filed.

5. It is contended on behalf of applicant that no offence against him is made out as the victim was major at the time of incident and she accompanied the accused out of her own free will and volition. They got married to each other as per Muslim rites and rituals and have been staying as husband and wife. They have a six months old child. The accused applicant and the so called victim took shelter of the High Court for protection by filing a Criminal Misc. Writ Petition No. 1675 of 2022. The High Court granted interim relief of protection from arrest. It is further contended that in the opinion of the Doctor, her age was found about 19 years by C.M.O. Gonda, and that in her statements under sections 161 and 164 Cr.P.C. she has stated that she is 19 years of age and that she got married to the applicant out of her own free will and volition. In such circumstances, when the accused and the victim have been staying as husband and wife and have a young child from this alliance, no criminal intent can be ascribed to him. The applicant is in custody since 03.08.2023.

6. The application of bail is opposed by the learned A.G.A. highlighting the fact that there are two medical reports, one indicating her age as merely 15 - 16 years and other indicating her age as 18 - 19 years. It is further highlighted that in this case, it was found that a false certificate of

age was obtained by the applicant for obtaining protection from the High Court. The learned A.G.A. fails to explain how the two incidents can be combined for a single trial in the backdrop of the fact that obtaining a document relating to age and filing the same before the High Court, is a separate incident and no F.I.R. was over registered in that respect.

7. I went through the contents of the F.I.R., the statements given by the victim under section 161 and 164 Cr.P.C. including the statement of the first informant, the evidence placed before this Court. Taking into account all the facts and circumstances of the case, as well as the period of custody, absence of any previous criminal history and all the attending facts and circumstances of the case, I find it a fit case for bail.

8. Let applicant - Javed Akhtar @ Hasaruddin 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.

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 :- 16.11.2023

Sumit Kumar