

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13950 of 2022

Applicant :- Ashiq Ali

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

Counsel for Applicant :- Anand Kumar Srivastava

Counsel for Opposite Party :- G.A.,Brijesh Kumar Pandey,Brajesh Kumar Pandey

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Brijesh Kumar Pandey learned counsel for the complainant and Sri Onkar Nath Pandey, learned A.G.A.-I for the State.

2. This bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.142 of 2022 under Section 363, 366, 376 IPC and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012, PS Laliya district Balrampur.

3. This Court granted interim bail to the applicant, vide order of this Court dated 24.3.2023, which is quoted below:-

"Heard learned counsel for the applicant, Sri Brijesh Kumar Pandey learned counsel for the complainant and Sri Rajesh Kumar Singh, learned A.G.A.-I for the State.

This bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.142 of 2022 under Section 363, 366, 376 IPC and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012, PS Laliya district Balrampur.

In compliance of the order of this Court dated 15.2.2023, the father of the applicant and the father of the prosecutrix are present in person before this Court.

The father of the applicant has stated that his son is ready to keep the prosecutrix as his wife. The father of the prosecutrix has stated that he has no objection. As per the medical report, the age of the girl is 18 years and the medical report otherwise, is not supporting the prosecution case. It is stated that no allegation of rape has been levelled and in the statement under Section 161 CrPC, the allegation of rape has been levelled. However, in statement under Section 164 CrPC, the prosecutrix has stated that she had physical relations out of her own freewill. Learned counsel for the applicant has stated that the applicant has not committed rape on her. Both are consenting party.

Since both parties are ready to reconcile the issue and the father of the prosecutrix is also stating before the Court that he wants to marry his daughter to applicant, and it has been requested that the applicant may be enlarged on bail. In paragraph-8 of the rejoinder affidavit, the applicant has stated that he is ready to keep the prosecutrix as his wife.

On the other hand, Sri Rajesh Kumar Singh learned AGA-I has opposed the bail but could not dispute the aforesaid fact. Learned counsel for the complainant Sri Brijesh Kumar Pandey has also submitted that in case marriage takes place and the applicant is ready to keep the prosecutrix as his wife, he has no objection.

Considering the overall facts and circumstances of the case, the changes version between the FIR and the statement under Section 164 CrPC, the statement of father of prosecutrix and the applicant and the age, it is a fit case for interim bail.

Let the applicant Ashiq Ali be released on interim bail for a period of four 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.

List this case on 25.7.2023.

In case the applicant does not marry the prosecutrix, his interim bail granted by this Court, will be cancelled. "

4. In compliance of the order of this Court, the supplementary affidavit dated 8.8.2023 was filed annexed therewith a copy of Nikahnama as Annexure No.SA-1. It has been submitted by the learned counsel for the applicant that the prosecutrix and the applicant have performed marriage on 20.6.2023 and they are living as husband and wife. The learned counsel for the O.P. No.2 is present and he has also not disputed the aforesaid fact and has submitted that the applicant and prosecutrix are living as husband and wife and the Nikah has already been performed by them.

5. It has been submitted by the learned counsel for the applicant that no fruitful purpose will be served in case the applicant is sent to Jail because the applicant and the prosecutrix are living as husband and wife together after performing Nikah.

6. Learned AGA could not dispute the aforesaid fact that the applicant and the prosecutrix are living as husband and wife after performing Nikah and the fact that it is a case of consent and age of prosecutrix is more than 18 years as per medical certificate.

7. Considering over all facts and circumstances of the case, the argument that the prosecutrix and the applicant have performed marriage and are living as husband

and wife, the argument of consent and the learned counsel for O.P. No.2 has no objection to the bail, it is a fit case for bail.

8. Let the applicant Ashiq Ali be released on bail in the above case crime number on the same bail bonds and sureties submitted earlier by the applicant in the earlier interim bail order dated 24.3.2023, on 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 :- 18.10.2023
Rajneesh JR-PS)