

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12313 of 2023

Applicant :- Arun Kumar Gupta

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

Counsel for Applicant :- Dev Mani Mishra

Counsel for Opposite Party :- G.A.,Chetan Kumar Tiwari,Shankar Lal Pandey

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed today on behalf of the applicant by his father, namely, Ram Sukh alias Ram Sukh Gupta, by learned counsel for the applicant, which is taken on record.
2. In pursuance of earlier order of this Court, the prosecutrix is present before this Court in person. On being interacted, she informs that she is willing to marry the applicant and her marriage with the applicant had already been solemnized and a baby boy has also taken birth out of that wedlock and she is not having any objection if the facility of bail is extended to the applicant.
3. Heard Shri Dev Mani Mishra, learned counsel for the accused-applicant, Shri Shankar Lal Pandey, learned counsel appearing for the opposite party no.2(complainant) as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Arun Kumar Gupta** for grant of bail, in F.I.R./Case Crime No. 106 of 2023, under Sections 376, 323, 504, 506 I.P.C. and Section 5(J)(II)/6 of the Protection of Children from Sexual Offences Act, 2012, Police Station Patti, District Pratapgarh, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant and the prosecutrix were studying in the same school and they developed intimacy and also solemnized marriage on 18.08.2022 but as the prosecutrix was minor, it was agreed that the Court-marriage shall be solemnized afterwards. It is further alleged that on the pretext of marrying, the sexual assault was continuously committed by the applicant on the prosecutrix and when this fact was brought in the knowledge of his family members they

also misbehaved and intimidated.

6. Highlighting the above facts, it is vehemently submitted that the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. has categorically admitted to be in a relationship with the applicant and also that she had solemnized marriage with the applicant on 18.08.2022 and at that point of time she was pregnant by two months and it was also agreed that their Court-marriage would also be solemnized when she will attain majority.

7. It is further submitted that applicant wants to live a happy married life with the prosecutrix, moreso when she has been blessed with a child.

8. It is next submitted that applicant is languishing in jail in this case since 22.03.2023 and he is not having any criminal history. Applicant is ready to abide by any condition, which may be imposed by this Court as well as by the trial Court. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the prosecutrix was minor at the relevant point of time and her consent is immaterial. Therefore, applicant is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that today a supplementary affidavit has been filed by the father of the accused/applicant, wherein it is categorically admitted that on 18.08.2022, the marriage of the prosecutrix was solemnized with the applicant at Belha Devi Mandir and 'Saptadi' was also performed and out of this wedlock a son, namely, Arav has also been taken birth. It is also stated that the applicant, who is detained in prison at Pratapgarh has communicated him (deponent/father) that he will take care of the prosecutrix and his son and would also maintain them. Learned counsel appearing for the complainant/informant also submits that he under instructions is not having any objection if the facility of bail is extended to the applicant. The prosecutrix, who is present before this Court, has also stated in categorical terms that she is not having any objection if the facility of bail is granted to the applicant, as further detention of the applicant in the prison may ruin their matrimonial life.

11. Having regard to all the facts and circumstances of the case and without discussing merits of the case solely on the ground

that the prosecutrix, who is almost major now has clearly stated that she is not having any objection, if facility of bail is extended to the applicant, as she has already solemnized marriage with the applicant and the factum of marriage has also been accepted by the applicant, who is represented by his counsel as well as the father of the applicant, who has filed a supplementary affidavit today, the facility of bail may be extended to the applicant, however, subject to certain conditions/restrictions.

12. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

13. Let the accused/applicant- **Arun Kumar Gupta** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall maintain his wife commensurate to his financial condition and would not subject the prosecutrix to any cruelty and in this regard he will file an undertaking in writing before the trial Court and the violation of this condition alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

16. Observations made herein-above by this court are only for

the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 9.11.2023

Praveen