

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14350 of 2022

Applicant :- Arun Kumar

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

Counsel for Applicant :- Rahul Singh Rana

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard Shri Rahul Singh Rana, learned counsel for the applicant, learned AGA for the State. No one has appeared for complainant though notice has been served sufficiently.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.0308 of 2022, under Sections 363, 366, 376 I.P.C., and Section 3/4 POCSO Act, Police Station Mohanganj, District Amethi.
4. This Court while granting interim bail has passed the detail order on 22.09.2023, which is quoted below:

"1. In compliance of order dated 29.08.2023, the prosecutrix has appeared along with Constable Ms. Manju Rani and S.I. Shri Suresh Kumar Dikshit, Police Station Mohanganj, District Amethi before this Court. On asking whether she want to marry the applicant, she stated that she wants to marry the applicant and live with him.

2. Heard Shri Rahul Singh Rana, learned counsel for the applicant, Shri Rajesh Kumar Singh, learned AGA-I for the State and perused the record.

3. The present bail application has been filed by the applicant Arun Kumar, with a prayer to enlarge him on bail in Case Crime No.0308 of 2022, under Sections 363, 366, 376 I.P.C., and 3/4 POCSO Act, Police Station Mohanganj, District Amethi.

4. Learned counsel for the applicant has submitted that the applicant is innocent and has been falsely implicated in the present case. He submitted that it is a case of consent and in her statement the prosecutrix has stated that out of her own will she had gone along with the applicant and physical relation was established with the applicant. He further submitted that the date of birth of the prosecutrix is 12.08.2002 at the moment the prosecutrix is major. Learned counsel on the basis of instructions states that the applicant is ready to marry the prosecutrix. The applicant is in jail since 16.10.2022.

5. *Learned AGA has no objection if the applicant wants to marry the prosecutrix.*
6. *Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the fact that prosecutrix and applicant both are ready to marry, in my opinion, the applicant may be granted interim bail for two months.*
7. *List this case on 28.11.2023.*
8. *It is expected that the applicant will marry the prosecutrix within the aforesaid period of bail and in case he does not marry the prosecutrix, the interim bail granted to the applicant would be cancelled on the next date.*
9. *Learned counsel for the applicant is directed to file proof of marriage on the next date of listing along with an affidavit and shall give an undertaking that he will keep the prosecutrix as his wife along with him.*
10. *Let the applicant, Arun Kumar be released on interim bail for two months 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.*
12. *Personal appearance of the prosecutrix is exempted."*

5. In compliance of the aforesaid order passed by this Court, the prosecutrix and the applicant have solemnised marriage on 22.10.2023, which fact has been stated in para 5 of the supplementary affidavit filed today. In this regard, marriage invitation card, marriage certificate and copy of Aadhar card of applicant and prosecutrix have been annexed as Annexure SA-2 to the supplementary affidavit. It is submitted that applicant and prosecutrix are living happily as husband and wife.

6. Learned AGA has no objection, if the marriage between applicant and prosecutrix has been performed.

7. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering the argument that applicant and prosecutrix have performed marriage and documents thereof has been annexed, therefore, I am of the opinion that the applicant is entitled to be released on bail.

8. Let the applicant, **Arun Kumar**, 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 :- 28.11.2023

Pks