

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14709 of 2023

Applicant :- Ratnesh Chaubey @ Tirloki

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Manoj Kumar Singh, learned counsel for the applicant, Sri Arpit Kumar, the learned AGA for the State, Sri Bal Krishna Shukla, the learned counsel for the informant and perused the records.
2. The instant application has been filed seeking release of the applicants on bail in Case Crime No. 436 of 2023, under Sections 363, 366, 368, 120-B IPC and Section 16/17 POCSO Act, Police Station Hardi, District Bahraich.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 03.08.2023 at 17:30 hrs. against three persons, including the applicant and his brothers, stating that all the three accused persons had enticed away the informant's daughter aged about 17 years on 02.08.2023 at about 05:30 a.m.
4. In the statement of the victim recorded under Section 161 Cr.P.C., she stated that the accused persons had forcibly taken her to Sitapur on a motorcycle and from there she was taken to Lucknow, they had kept her in a rented room and they forcibly married her in a temple. In this statement, the victim did not specify as to which of the three accused persons had married her and she levelled the allegation of forcibly marrying her against all the three accused persons. The victim declined to undergo medico legal examination.
5. In the statement of the victim recorded under Section 164 Cr.p.C., she stated that all the three accused persons had enticed her away and that the applicant has married her against her wishes. The other two co-accused persons are elder brothers of the applicant. She stated that there is an old animosity between their family and, therefore, they had taken her. She had been taken away on a motorcycle.

6. In the affidavit filed in support of the application it has been stated that the applicant is a 25 years innocent person having no criminal history and he has been falsely implicated in the present case.

7. Both the other accused persons have been granted bail in the present case.

8. The learned counsel for the informant has vehemently opposed the bail application and he has submitted that the applicant is habitual of committing similar type of offences.

9. Replying to the aforesaid objection, the learned counsel for the applicant has stated that the applicant was involved in another case under Sections 363, 323, 504 IPC but the police had submitted a final report after investigation and this fact has been pleaded in para 31 of the affidavit filed in support of the application. The applicant has no other criminal history.

10. The learned counsel for the informant has next submitted that the offence committed by the applicant is a fraud against the society. When the Court requested the learned counsel to address the Court in detail on this aspect as the Court failed to understand the term fraud against the society, he stated that he does not have the bare act available with him. The Court provided a copy of the Indian Penal Code to the learned counsel for the informant with a request to read out the definition of fraud but after spending considerable time, the learned counsel for the informant could not find out and read the definition of fraud from the Indian Penal Code provided by the Court to the learned counsel for the informant. When the court pointed out that its precious time was being wasted by the learned counsel for the informant in going through the entire penal code to search out the definition of fraud, he stated that he had not come prepared to advance submissions on this point. The conduct of the learned counsel for the informant in coming to advance submissions before the High Court without preparing the same cannot be appreciated, to say the least.

11. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the victim has stated in her statement under Section 161 Cr.P.C. that the three accused persons had taken her to Sitapur and thereafter to Lucknow on a motorcycle, forcibly and still, no person saw a girl being taken away forcibly by four men on a motorcycle during the entire journey; the victim stated that 'the accused persons' had married her in her statement recorded under Section 161 Cr.P.C., which prima facie indicates that her statement was not correct and apparently she tried to implicate

all the accused persons by alleging that all of them had married her; that the victim declined to undergo medico legal examination and that even in the statement of the victim recorded under Section 164 Cr.P.C., where she stated that the applicant had married her, she did not allege commission of any other misdeed; that both the other co-accused persons have already been granted bail and without making any observation, which may affect the merits of the case, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail in the aforesaid case.

12. Accordingly, this bail application stands ***allowed***.

13. Let the applicant-***Ratnesh Chaubey @ Tirloki*** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

- (i) the applicant shall not tamper with the prosecution evidence;
- (ii) the applicant shall not pressurize the prosecution witnesses;
- (iii) the applicant shall appear on each and every date fixed by the trial court.

Order Date :- 14.12.2023

Pradeep/-