

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11729 of 2024

Applicant :- Altaf

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

Counsel for Applicant :- Mrs.Suniti Sachan,Gangeshwar Pandey,Rashi Sachan

Counsel for Opposite Party :- G.A.,Dhananjai Kumar Tripathi

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Mrs. Suniti Sachan, learned counsel for the applicant, Sri Ran Vijay Singh, learned A.G.A. for the State and Sri Prashant Chaudhary, Advocate who has filed 'Vakalatnama' along with short counter affidavit of the informant, same is taken on record.

2. It has been contended by the learned counsel for the applicant that the applicant is in jail since 3.9.2024 in Case Crime No. 400 of 2024 u/s 65(1), 351(3) B.N.S. and 3/4 (2) POCSO Act, P.S. Rupaidiha, District Bahraich. It has been submitted that the applicant has been falsely implicated in this case as he has not committed any offence as alleged.

3. Attention has been drawn towards impugned F.I.R. wherein the allegation has been levelled against the present applicant only for committing rape with the minor daughter of the informant. Mrs. Sachan has stated that the incident is dated 29.8.2024 but the F.I.R. was lodged on 31.8.2024 and the delay of two days has not been explained. Mrs. Sachan has further submitted that though the prosecution story from lodging of the F.I.R. to recording the statement of the prosecutrix u/s 180 and 183 B.N.S.S. are intact but the fact is otherwise, the present applicant and prosecutrix are in affairs and they are willing to get married. As soon as the prosecutrix attains the marriageable age the applicant will marry with her. She has stated that the physical relation was consensual in nature as the statement of the doctor which has been enclosed as Annexure no. 7 has been shown wherein the doctor has opined that there is no sign of use of force. No sign of sexual violence clinically. However,

possibility of sexual assault would not be ruled out. Final opinion reserve pending for F.S.L. report. As per medical examination report the hymn of the prosecutrix is old torn. The present applicant is having no criminal history of any kind whatsoever. The charge-sheet has been filed in this case.

4. The learned counsel for the applicant has given an undertaking on behalf of applicant that the applicant shall not misuse the liberty of bail and shall cooperate with the trial proceedings and shall abide by all terms and conditions of bail, if granted.

5. Learned counsel for the informant has shown para 2 of the affidavit of the informant wherein it has been indicated that the family members of both the parties have decided that as soon as the prosecutrix attains the marriageable age, their marriage would be solemnized. He has stated that the present informant is not opposing the bail application of the applicant.

6. Sri Ran Vijay Singh, learned A.G.A. has submitted that this is a case relating to offence of POCSO Act wherein the criminal act may not be settled amicably and when the offence in question has been committed the prosecutrix was aged about 19 years. Further, the prosecution story is intact from lodging of F.I.R. to recording of statement u/s 180 and 183 B.N.S.S. So far as the fact that the informant is not opposing this bail application and both the parties have decided that they shall arrange the marriage of the applicant with the prosecutrix when the prosecutrix attains the marriageable age, he has nothing to say but any appropriate order may be passed in the interest of prosecution.

7. Without entering into the merits of the case and considering the arguments of learned counsel for the parties, contents and allegations of the F.I.R., the fact that both the parties have decided to secure the future of the prosecutrix by getting her married with the applicant when she attains the marriageable age, the informant is not opposing the bail application, the charge-sheet has been filed in this case and the undertaking given on behalf of

the applicant that he shall not misuse the liberty of bail and shall cooperate in the trial proceedings, the applicant is entitled to be released on bail in this case.

8. Bail application is **allowed**.

9. Let the applicant **Altaf**, involved in aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(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.

(v) The applicant shall not leave the country without permission of the Court concerned.

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(Rajesh Singh Chauhan, J.)

Order Date :- 19.12.2024

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