

Case :- BAIL No. - 7327 of 2021

Applicant :- Javed Alam

Opposite Party :- State of U.P.

Counsel for Applicant :- Anand Kumar Yadav, Anuj Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. The applicant has prayed for bail in case crime No.79 of 2021, under Sections- 376, 504, 506 of IPC, police station Kotwali Bikapur, District Faizabad/Ayodhya.

3. Learned counsel for applicant has submitted that the first information report was lodged by father of the prosecutrix stating that the applicant maintained physical relationship with the daughter of the complainant for last one and half years on the false promise of marriage. When the prosecutrix asked to marry her he has put a condition that the prosecutrix should convert her religion and only then he will marry her and consequently F.I.R. has been registered under Section 376 IPC. During the investigation the statement of the prosecutrix has been recorded under Sections 161 and 164 Cr.P.C. where she has supported the case of the prosecution reiterating the contents thereof. It is further submitted that initially the physical relations were established with the applicant on the promise of marriage and subsequently the applicant has put a condition that the prosecutrix should change her religion only thereafter the applicant would marry the prosecutrix and, hence, it is stated that the applicant is refusing to marry the prosecutrix and, therefore, offence under Section 376 IPC is made out.

It has been urged by counsel for the applicant that even if the facts as narrated in the first information report are taken to be correct then no offence under Section 376 IPC is made out in as much as there was no fraud in obtaining the consent of the prosecutrix and the applicant is still ready and willing to marry the applicant only when the prosecutrix changes her religion.

4. The bail application has been opposed by learned A.G.A. but he could not dispute the aforesaid facts.

5. Considering the arguments of learned counsel for the applicant it is clear that the applicant and the prosecutrix have maintained physical relations consensually and the same were based on the promise of marriage extended by the applicant to the prosecutrix. It is only when the applicant has asked the prosecutrix to change her religion that the present F.I.R. has been lodged stating that the consent of the prosecutrix was obtained by fraud and also considering the factual matrix of the present case it seems that the applicant is willing and ready to marry the prosecutrix only after the prosecutrix changes her religion. Even in the statement of the prosecutrix as has been recorded during the investigation, there does not seem to be doubt that the applicant is in any way refusing to marry the prosecutrix but only condition has been imposed about change of religion and, as such, at this stage it cannot be said that the consent for establishing physical relations was made on the false promise of marriage and consequently the consent is hit by the provision of Section 90 of IPC and also considering the fact that the applicant and the prosecutrix both are major and have had physical relations for last one and half year and in view of the peculiar facts and circumstances the present case, I am of the considered opinion that the consent was *prima facie* not obtained by fraud and consequently, the applicant is entitled to be released on bail. The bail application is accordingly allowed.

6. Let the applicant, Javed Alam, involved in in case crime No.79 of 2021, under Sections- 376, 504, 506 of IPC, police station Kotwali Bikapur, District Faizabad/Ayodhya 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 would not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case

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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 her 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 CrPC. 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.

7. It is provided that none of the observations made above shall be considered by the trial court and the trial shall proceed on its own merits.

Order Date :- 14.9.2021
RKM.

(Alok Mathur, J.)