

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3511 of 2022

Applicant :- Suraj

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

Counsel for Applicant :- Ram Pukar Singh

Counsel for Opposite Party :- G.A., Shiv Charitra Tiwari

Hon'ble Rajesh Singh Chauhan, J.

Heard Sri Ram Pukar Singh, learned counsel for the applicant, Dr. Gyan Singh, learned A.G.A. for the State and Sri Ram Lakhan, learned counsel for the father of the informant / complainant inasmuch as in the present case the prosecutrix is the informant herself.

It has been contended by the learned counsel for the applicant that the applicant is in jail since 6.1.2022 in Crime No. 0007/2022 u/s 376, 506 IPC, & 5/6 of POSCO Act, 2012, P.S. Banthra, District Lucknow. It has been submitted that the applicant has been falsely implicated in this case as he has not committed any offence as alleged.

At the very outset, learned counsel for the applicant has submitted that this is a case of love affair. Even as per the prosecution story so narrated in the F.I.R. she had gone to Ludhiyana with the present applicant willingly where the present applicant has established physical relation on the promise of marriage. Thereafter, the attention has been drawn towards the statement of prosecutrix / informant recorded u/s 161 and 164 Cr.P.C. wherein she has not leveled any allegation against the present applicant. Particularly, in the statement recorded u/s 164 Cr.P.C. she did not supported the prosecution version rather has submitted that she was willingly living with the present applicant. Their relation were consensual. They got married without informing their family members. She subsequently conceived and was blessed with a male child. It has been further submitted that presently the informant / prosecutrix is living with the family members of the applicant and she does not want to go to the place of her parents.

At this stage attention has been drawn towards the counter affidavit of the father of the prosecutrix wherein it has been categorically indicated in para 4 that his daughter is happily living with the family members of the accused. Learned counsel for the father of the prosecutrix has also informed on the basis of instructions that presently the prosecutrix is living with family of the accused along with her infant child.

Therefore, learned counsel for the applicant has submitted that since the prosecutrix is not supporting the prosecution version and she is living with the family of the accused person, charge-sheet has been filed, therefore, if the applicant is released on bail there would be no apprehension of absconding or tampering of evidence / witnesses by the applicant.

Learned counsel for the father of the informant / prosecutrix has supported the version of learned counsel for the applicant. However, learned State Counsel Dr. Gyan Singh has opposed the bail application on the point that since the age of the present applicant at the time of incident was below 18 years, to be more precise, around 15 years and one month on the basis of statement of the Principal of the institution where the prosecutrix was studying. Therefore, such consent of prosecutrix is meaningless in the eyes of law and the present applicant should not be released on bail.

On that learned counsel for the applicant has drawn attention of this Court towards one decision of this Court dated 25.1.2022 in re: ***Criminal Misc. Bail Application No. 53947 of 2021 (Atul Mishra vs. State and three others)*** wherein this Court in para 17 and 18 has observed as under :

"17. No doubt consent of minor girl has got no value in the eyes of law, but in the present scenario where the girl has given birth to a baby from the applicant and in her 164 statement, she has declined to go with her parent and from last 4-5 months residing at Rajkiya Balgrih (Balika) Khuldabad, Prayagraj in most inhuman condition with her infant baby, this by itself is pathetic and would amount to adding to her miseries.

18. This is extremely gloomy situation, where the applicant is in jail since 4.10.2021 for the alleged sin committed by him while marrying with a girl belonging to scheduled caste and both of them are peacefully residing as husband and wife. It is extremely harsh and inhuman to devoid that baby from the parental love and affection on account of the fact that both of them loved each other and decided to marry, when the girl was minor. Even today the boy (the applicant) is more than ready to keep his wife and baby with him and would take good care of both."

He has further submitted that in re: ***Atul Mishra (supra)*** all facts are similar except the prosecutrix of that case was residing at Rajkiya Balika Grih, Prayag Raj whereas the prosecutrix is residing with the family members of the accused / applicant. Further, as per learned counsel for the applicant on the basis of instructions that as soon as the present applicant is released on bail he shall lookher after properly.

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.

Heard learned counsel for the parties and perused the material available on record.

At the very outset, I am pained to notice this fact that a children of tender age who have not attained the age of majority are indulging in such type of relations which may not be said to be a proper relation. When a certain age has been prescribed by the statute to get married and live accordingly, any such act which has been committed prior to such age can not be approved. The age of 15-16 years or below 18 years is not the age where any young couple should enter into the institution of marriage. But in the peculiar facts and circumstances of the present case wherein the present applicant and prosecutrix have not only got married but they are having infant son from said wedlock and this is the responsibility of the couple to look after his child properly. If the present applicant is not released from jail or he is kept in jail, there might be a possibility that his minor wife with his son might not be taken care of properly by his parents, therefore, considering the larger interest of the child and mother who should have been taken care of by the present applicant, the bail of the present applicant is being considered.

This bail order may not be cited in any other case as a precedence inasmuch as considering the peculiar facts and circumstances of the present case the bail application is being allowed.

Accordingly, the bail application is ***allowed***.

Let the applicant Suraj, 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 :- 27.5.2022

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