

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32233 of 2024

Applicant :- Abhishek

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Atmaram Nadiwal, Dinesh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. As informed by learned A.G.A., notice has been served to the informant on 27.8.2024.
2. Heard Sri Atmaram Nadiwal, learned counsel for the applicant as well as Sri S.P. Pandey, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 82 of 2024, U/S 376, 506 IPC and 5(J)(II)/6 of The Protection of Children from Sexual Offences Act, Police Station Chilkana, District Saharanpur, during the pendency of trial.

PROSECUTION STORY:

4. The applicant is stated to have fleeced and fooled the daughter of the informant aged about 15 years and had established corporeal relationship with her on the false promise of marriage. The victim is stated to have been impregnated out of the said relationship and the applicant is stated to have subsequently refused to comply with the said promise of marriage, and had even threatened her.

ARGUMENTS ON BEHALF OF THE APPLICANT:

5. The applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. He has nothing to do with the said offence.
6. The FIR is delayed and there is no explanation of the said delay caused.
7. The victim is major. As per the ossification test report, her age has come out to be 18 years. The victim has categorically stated in her statement recorded u/s 164 Cr.P.C. that no force was applied to her. The applicant is ready to take care of the victim herein and marry her. He is even ready to take care of the offspring, a baby girl, born out of the said corporeal relationship.

8. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

9. There is no criminal history of the applicant. The applicant is languishing in jail since 4.4.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT/STATE:

10. The bail application has been opposed but the fact that out of the said union of the couple, a baby girl was born has not been disputed.

CONCLUSION:

11. This Court earlier on in the case of *Ramashankar vs. State of U.P.*¹ has observed as under:

“9. In this conservative and non-permissive society, it is true that marriage in the same village is prohibited and is not customary, and it may be an after effect of media and cinema. Instances of marriage in the same village are on the rise. This does adversely affect the social fabric. Both the accused and the victim are of very young age and have barely attained the age of majority. A baby girl has been born out of their wedlock. Though, the marriage may not be described as per the law of the land, but the Court has to apply a pragmatic approach in such conditions and indeed both the families are required to act practically. A lot of water has flown down the Ganges. Now, it's time to move ahead.

10. The youth in their tender age become victim to the legal parameters though rightly framed by the legislature, but here this Court is being drawn to make an exception in the extraordinary circumstances of the case. The life of a newborn child is at stake. She cannot to be left to face the stigma during her life.

11. The mathematical permutations and combinations have to be done away with. A hypertechnical and mechanical approach shall do no good to the parties and why should an innocent baby out of no fault of her bear the brutalities of the society in the present circumstances. Human psychosis and that too of the adolescents has to be taken into account.

1. *2022:AHC-LKO:29649*

12. This Court in the case of *Atul Mishra vs. State of U.P. And 3 others*², has also done away with the stringent provisions of the P.O.C.S.O. Act under the extra-ordinary circumstances of the case.”

12. The challenge lies in distinguishing between genuine cases of exploitation and those involving consensual relationships. This requires a nuanced approach and careful judicial consideration to ensure justice is served appropriately.

13. The well-known principle of "*Presumption of Innocence Unless Proven Guilty*," gives rise to the concept of bail as a rule and imprisonment as an exception.

14. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been recapitulated by the Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Ors.*³.

15. Reiterating the aforesaid view the Supreme Court in the case of *Manish Sisodia Vs. Directorate of Enforcement*⁴ has again emphasised that the very well-settled principle of law that bail is not to be withheld as a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that "*bail is a rule and jail is an exception*".

16. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

17. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.

18. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and

2. 2022 (3) ALJ 278

3. 2022 INSC 690

4. 2024 INSC 595

without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

CONCLUSION:

19. Let the applicant- **Abhishek** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

(i) The applicant is being released on bail on the assurance of the learned counsel for the applicant that he shall marry the victim within three months from his release from jail and take care of her as well as the new born baby. The applicant shall deposit (fixed deposit) a sum of Rs.2,00,000/- in the name of new born baby of the victim till her attaining the age of majority within a period of six months from the date of release from jail.

(ii) The applicant shall not tamper with evidence.

(iii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

20. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

21. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 18.9.2024

Shalini

(Justice Krishan Pahal)