

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22039 of 2021

Applicant :- Munna Khan @ Asfaq Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaytri Rajput, Dinesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

Heard Shri Dinesh Kumar Singh, learned counsel for the applicant through virtual mode and learned A.G.A. Perused the record.

By means of the present bail application the applicant, who is facing prosecution in connection with Case Crime No.104 of 2021, u/s 363, 366, 376, 323, 506 I.P.C. and Section 3, 5(1) of U.P. Prohibition of Unlawful Conversion of Religion Ordinance, 2020, P.S.-Kotwali Nagar Mahoba, District-Mahoba, is seeking his enlargement on bail during trial. The applicant is in jail since 05.3.2021.

Submission of learned counsel for the applicant is that the present F.I.R. was got registered by Smt. Neelam, the victim herself, on 04.3.2021 under aforementioned sections of I.P.C. and the Ordinance against applicant and his sister, with the allegation that the victim and the accused Munna Khan reside in same Mohalla-Bajariya, District Mahoba. From last four years they are in physical relationship with each other. It is alleged in the F.I.R. that the applicant has taken certain obscene still photographs and videos of the victim and used them as a tool of blackmail the victim to maintain physical relationship with her. This relationship has continued for last four years without any objection, resistance or complaint to anyone. Thereafter on 08.12.2020 the victim got married with one Deepak Kushwaha and went to Delhi. It is stated by the victim in her 161 and 164 statements, that she came back from Delhi to Mahoba on 18.2.2021 and thereafter from 18.2.2021 to 02.03.2021 she remained in the company of applicant at Orai along with her sister, where the applicant used to ravish her and started compelling her to change her religion.

From the ossification test it is clear that the victim is aged about 19 years. She has not received any formal education. She resides in the same locality where the applicant resides. In such circumstances, it is unswallowable proposition that in a small city, like Mahoba, she was not aware about the background of

applicant or about his religion that too for four good years. Besides this, there is no recovery of any obscene still photograph or video, which is said to have been used for blackmailing, by the police during course of investigation. In the statement u/s 164 Cr.P.C. the victim has clearly stated that she was in relationship with the applicant for last four years and even after her marriage on 8.12.2020 she came to Mahoba from Delhi, and thereafter, went with him to Orai, where she was being pressurised for change her religion. The questionnaire put to her, completely exposes her falsity. Till date the victim has not been converted to other religion, and therefore, the presumption of Section-12 of the Ordinance, 2020 would not be made applicable. The present F.I.R. came into existence in the month of March, 2021, though the present Ordinance came into existence on 27.11.2020. It is but obvious that the applicant and the victim were in relationship from last four years when there was no ordinance and also there was no objection or resistance from the side of the victim. All of a sudden, after coming this Ordinance into existence, she got aware about her rights. Her mental thinking exposes about her conduct. She was a willful and active participant in all actions faced by her during last four years. Cumulative effect of all above factors clearly indicative that the victim was dire interested to remain in the company of applicant, and even after her marriage she wanted to maintain the relationship with him.

Learned A.G.A. has vehemently opposed the prayer for bail but could not dispute the above facts.

Keeping in view the nature of the offence, evidence on record regarding complicity of the accused and 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.

Let the applicant ***Munna Khan @ Asfaq Khan***, who is involved in aforementioned 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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 IPC.

(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., MAY BE ISSUED AND IF 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 IPC.

(iv) 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.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

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.

Since the bail application has been decided under extra-ordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with

emergent condition:-

1. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.

2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

4. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 11.6.2021

M. Kumar