

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27584 of 2021

Applicant :- Rahul Kumar Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shashi Kumar Dwivedi, Hanuman Kinkar

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

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

By means of this application, the applicant who is involved in case crime no.48 of 2021, under Section 363, 366, 376(3) IPC, section 3(4)(2) of POCSO Act, and Section 3(2)(V) of SC/ST Act, Police Station-Pipri, District-Sonebhadra is seeking enlargement on bail during the trial.

Submission made by learned counsel for the applicant is that initially the FIR was registered on 04.04.2021 for the incident said to have taken place on 03.04.2021 by one Hira Mani against the applicant with the allegation that her daughter Miss 'X' was enticed away by the applicant on 03.04.2021 around 5:30 in the evening while going to attend the tuition. Since then, her whereabouts was not known. It is further contended that eventually, the girl was recovered and her 161 ad 164 Cr.P.C. statements were recorded on different occasions. On a perusal of all these statements, she has blasted the entire prosecution case to its core by making a mention that she was in dense affair with the applicant and decided to marry. They came to Allahabad and lived in a hotel where they established physical relations with each other. When all the money drained out, then they were caught by the police at police station at Allahabad. She was put for her medical examination and as per medical, her age comes around 18-19 years. Though, she was pursuing her studies in class-Xth but there is no high school certificate to this effect. The whatsapp messages annexed as Annexure-4 to the application speaks oceans about her *inter se* relationship of the applicant. Taking into account the age of the girl and her conduct indicates that she seems to be in consensual relationship, with the applicant, came to Allahabad on her volition and accord. Still the applicant is languishing in jail since 09.04.2021.

Learned A.G.A opposed the prayer for bail by making a mention that she is minor girl but could not dispute the fact that she is still pursuing her studies in class-Xth and as per medical, her age comes around 18-19 years.

Keeping in view the nature of the offence, evidence, complicity of the accused and submissions of learned counsel for the parties and considering the age of the girl, I am of the view that the applicant has made out a case for bail.

Let the applicant, **Rahul Kumar Gupta**, who is involved in the aforesaid case 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.

Order Date :- 29.10.2021

Sumit S