

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11156 of 2024

Applicant :- Atul Gautam

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

Counsel for Applicant :- Karunesh Singh, Vijay Pratap Singh

Counsel for Opposite Party :- G.A., Piyush Shrivastava, Prabhat Singh Rathour

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Shri Karunesh Singh and Shri Vijay Pratap Singh, learned counsels for the applicant, Shri Bhanu Pratap Singh, learned A.G.A.-I for the State as well as Shri Prabhat Singh Rathour and Shri Piyush Srivastava, learned counsel for the informant/complainant.

2. As per learned counsel for the applicant, the present applicant is languishing in jail since 16.09.2024, in Case Crime No.0556/2024, under Sections 376, 323, 504, 506 of I.P.C., Police Station - Madaion, District - Lucknow.

3. This Court, on 07.11.2024, had passed following order :-

"Heard.

This Court has passed the order dated 23.10.2024, which reads as under:-

"1. Heard Shri Vijay Pratap Singh, learned counsel for the applicant, Shri Diwakar Singh, learned Additional Government Advocate for the State and Shri Piyush Srivastava, who has filed his Vakalatnama on behalf of the informant, the same is taken on record.

2. At the very outset, learned counsel for the applicant has stated that the present applicant has been falsely implicated in F.I.R./Case Crime No.0556/2024, under Sections 376, 323, 504, 506 I.P.C., at Police Station Madaion, District - Lucknow and he is in jail since 16.09.2024.

3. Learned counsel for the applicant has submitted that present applicant is in relation with the prosecutrix and both persons were living together in live-in relationship for couple of years and he is ready to get married with the prosecutrix. However, on being confronted on the point, the learned counsel for the

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prosecutrix has requested that he may be given some short time to ask this fact from the prosecutrix.

4. Since the present applicant and prosecutrix are said to be major persons, are in live-in relationship for couple of years, and applicant is willing to get married with the prosecutrix, therefore, on the next date, the learned counsel for the prosecutrix/informant shall produce the prosecutrix before this Court so as to know her willingness as to whether she is also willing to get married with the applicant or not.

5. List on 7th November, 2024.

6. On that date, the prosecutrix/informant shall appear in person.

7. In the meantime, learned A.G.A. may also seek complete instructions in the matter.

8. When the case is next listed, name of Shri Piyush Srivastava be printed in the cause list as counsel for the opposite party. "

In compliance of the aforesaid order, the prosecutrix/victim along with her four months' daughter are present. She has stated that the infant daughter is the daughter of the applicant and the applicant is well known about this fact. She has further stated that she has no relation with her parents as she being a Muslim girl established relation with the present applicant who is Hindu by religion. Despite the promise of applicant to marry with her, he breached his promise. She has also stated that she is looking after her daughter in such a difficult situation and is still apprehensive as to whether if pursuant to the direction being issued by this Court, the applicant gets married with her, will look after her and her infant daughter. She also apprehends that the applicant will misbehave and torture her. She is also apprehensive that even if the applicant gets married with her and get the marriage registered, his behaviour can be changed. Therefore, she is seeking some short time to think over the aforesaid situation to record her statement before the Court.

Considering the aforesaid contention of the prosecutrix/victim, the next date is fixed for 5th December, 2024. On that date, the prosecutrix shall again appear in person.

Notably, this is the case where the counsel for the applicant is saying on the basis of instruction that the applicant is ready to get married with the prosecutrix under Special Marriages Act since, both belong to different religion and the prosecutrix has stated that she is also ready to get married with the applicant

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under Special Marriages Act but she wants some undertaking in the name of social security by the applicant for future, therefore, the Commissioner of Police, Lucknow as well as the Superintendent of Jail, Lucknow are directed to ensure the presence of the present applicant before this Court on 5th December, 2024 at 2:30 PM, so that the willingness of both the persons could be noted by the Court.

Let the copy of this order be provided to the Commissioner of Police, Lucknow as well as the Superintendent of Jail, Lucknow where the present applicant is languishing, within three working days by the Registry of this Court for its compliance.

The present application may be disposed of finally on the next date considering the arguments of the counsel for the parties and material available on record."

4. In compliance of the above order of this Court, accused/applicant - Atul Gautam is present before this Court, who has been brought from District Jail, Lucknow by Sub Inspector Shri Mohd. Khalid Khan, Police Lines, Lucknow and Head Constable Shri Mukhtar Ali, Police Lines, Lucknow. Prosecutrix is also present before the Court along with her infant child of 05 months.

5. When the aforesaid case was taken up at 2.30 P.M., the prosecutrix requested the Court that she may be given at least 15 minutes to talk with the applicant outside the Court, therefore, both, the prosecutrix and the applicant, were permitted to talk to each for future planning, if they wish to live together as husband and wife.

6. After utilizing aforesaid time, the applicant and the prosecutrix again appeared before the Court at 3.20 P.M. The prosecutrix has stated that she has talked with the applicant. She is satisfied with the assurance given by the applicant and she states that she is willing to live with the applicant as his wife. However, she has requested the Court that if any direction may be issued to the applicant to protect the monetary security of the prosecutrix and her child, it would be in the interest of her and her child and in the interest of justice as well.

7. The applicant has stated that he and the prosecutrix were living happily as husband and wife but on account of some trivial dispute between them, the prosecutrix lodged the impugned F.I.R. He has also stated that he is ready to get married with the prosecutrix under the Special Marriage Act, with expedition, i.e. as soon as he is released from jail, say within seven days after his release, he shall move an application

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under the Special Marriage Act, before the court concerned. Thereafter, he shall do the required pairvi so that the appropriate orders regarding their marriage be passed from the competent court under the relevant provisions of the Special Marriage Act.

8. After the aforesaid marriage is performed, they shall get their marriage registered with the Marriage Registering authority concerned, as early as possible. Applicant has also stated that he shall also approach the Bank concerned to prepare the Fixed Deposit Receipt of Rs.5.00 Lacs (Rupees Five Lacs only) for a period of 05 years in the name of his infant child through the mother of the child. The purpose of aforesaid Fixed Deposit Receipt is to protect the monetary security of the prosecutrix as well as her child. The applicant has stated that the aforesaid F.D.R. shall be the token of his good gesture to show his bonafide that he is willing to look after his wife/prosecutrix and his infant child, properly. In addition to this F.D.R., he shall also look after his wife and his infant child properly and to the best of his capabilities so that his wife/prosecutrix and child live comfortably.

9. The prosecutrix has stated that she is also able to earn something from her expertise as a make up artist and with her earnings she may lead a good life with her husband Atul Gautam together.

10. Learned counsel for the applicant has undertaken on behalf of the present applicant that the applicant shall not misuse the liberty of bail, if so granted by this Court and shall abide by all terms and conditions of the bail order and shall cooperate with the trial proceedings.

11. Learned A.G.A. has opposed the prayer for bail but he has not disputed the aforesaid submissions of applicant.

12. In the above circumstances, without entering into the merits of the issue, considering the fact that it is a case where the applicant and the prosecutrix are willing to live together peacefully and comfortably as husband and wife along with their infant child and since they themselves have decided the conditions for living together as husband and wife, therefore, in the interest of justice as well as looking into the larger interest of the parties and the infant child, and also taking into consideration the fact that the F.I.R. is the result of the trivial dispute between the parties and both the parties are ready and willing to get married and live together and also the fact that present applicant has no previous criminal history, I find it to be a fit case for bail. Accordingly, the bail application of the

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applicant is **allowed**.

13. Let the applicant (Atul Gautam) be released on bail in Case Crime No.0556/2024, under Section 376, 323, 504, 506 of I.P.C., Police Station - Madiyon, District - Lucknow on his furnishing a personal bond and two sureties in the like amount to the satisfaction of the court concerned with the following conditions :-

(i) As soon as the applicant is released from jail, say within seven days from the date of his release the applicant shall move an application under the Special Marriage Act, before the court concerned and shall do the required pairvi so that the appropriate orders regarding their marriage be passed from the competent court under the relevant provisions of the Special Marriage Act.

(ii) After performance of the marriage under the Special Marriage Act, they shall get their marriage registered with the Marriage Registering authority concerned, as early as possible.

(iii) Applicant shall approach the Bank concerned and shall get the Fixed Deposit Receipt of Rs.5.00 Lacs (Rupees Five Lacs only) prepared in the name of the infant child through her mother, for a period of 05 years.

(iv) Applicant shall look after his wife/prosecutrix and the infant child properly.

(v) 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.

(vi) 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.

(vii) 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.

(viii) The applicant shall remain present, in person, before the

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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.

(ix) Applicant shall surrender his passport, if any, immediately after release from jail before the court concerned.

(x) Applicant shall not leave the country without the permission of the court.

(xi). that in default of any of the conditions mentioned above, the investigating officer/prosecution shall be at liberty to file appropriate application for cancellation of bail, which shall be dealt with strictly in accordance with law.

(xii) The police officers who have brought the applicant before this Court from District Jail, Lucknow are directed to hand over the custody of the present applicant to the jail authorities.

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(Rajesh Singh Chauhan,J.)

Order Date :- 5.12.2024

ML/-