

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36853 of 2024

Applicant :- Devideen

Opposite Party :- State Of Up And 3 Others

Counsel for Applicant :- Vishvajit Tiwari, Yogesh Mishra

Counsel for Opposite Party :- Ashish Dwivedi, G.A., Shivam Dubey

Hon'ble Sanjay Kumar Singh, J.

1. Heard learned counsel for the applicant, learned Additional Government Advocate representing the State and Mr. Ashish Dwivedi, learned counsel appearing on behalf of the first informant/opposite party No.2.

2. By means of this application under Section 439 of Cr.P.C., applicant-Devideen, who is involved in Case Crime No. 270 of 2023, under Sections 498-A, 323, 504, 506, 363, 366A, 427, 376(2)(N) of I.P.C., Sections 5(L)/6 of the Protection of Children From Sexual Offences Act and Sections 3/4 Dowry Prohibition Act, Police Station Mau, District Chitrakoot, seeks enlargement on bail during the pendency of trial.

3. As per the prosecution case, the F.I.R. of the complainant, who is wife of the applicant was registered on 16.11.2023 through her application dated 06.11.2023, wherein she has made allegation against her husband (applicant), mother-in-law and father-in-law alleging inter alia that she was married about six years ago with the applicant and from the wedlock of the applicant, she gave birth to a daughter, therefore her husband remained angry and unhappy, due to which after drinking alcohol he used to harass and beat her every day on the pretext of bringing less dowry, whereas sufficient dowry was given by her father, even then she was harassed and tortured in her matrimonial home. After giving birth to a girl child, she was continuously harassed, tortured and threatened to death. She did not tell anyone out of fear of shame and her mother-in-law and father-in-law were saying that they will get the

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applicant married again. On account of harassment she was living in her parental home. On 27.02.2023 applicant came to her parental home, and enticed away her minor sister aged about 16 years, regarding which, a first information report was lodged and applicant was sent to jail. After releasing on bail, the applicant again on 23.08.2023 lured her younger minor sister from Indian Bank, Mau and on the pretext of taking her home, he was taking her towards Prayagraj, which was seen on the way by her nephew. His mobile was switched off. Regarding the said incident application was given to police on 25.08.2023 but no action was taken.

4. It is contended by learned counsel for the applicant that the F.I.R. was lodged after delay of three months. The victim was recovered on 10.01.2024 and thereafter her statement under Section 161 and 164 Cr.P.C. was recorded, in which she has stated that she went with the applicant with her own will. As per medical-examination report dated 11.01.2024 of the victim, she is aged about 17 years and no injury was found on her body. It is also submitted that there is a dispute of a sum of Rs. 2,00,000/-, which has been borrowed by the father of the complainant from the applicant, due to which he has been falsely implicated in this case. Victim also gave an affidavit before the trial court on 22.08.2024 in favour of the applicant. Lastly, it is submitted by the learned counsel for the applicant that the applicant is languishing in jail since 28.07.2024. Apart from this case applicant has criminal history of one case being Case Crime No. 37 of 2023, under Sections 363, 366A I.P.C., Police Station Mau, District Chitrakoot, in which he is on bail, which has been explained in paragraph No. 19 of the affidavit. In case, the applicant is released on bail, he will not misuse the liberty of bail.

5. Per contra, learned Additional Government Advocate for the State as well as learned counsel for the informant opposed the prayer for bail of the applicant by contending that the victim is minor girl aged about 17 years. The applicant was continuously harassing and torturing his wife for additional dowry.

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As per the prosecution case, the applicant was having an ill eye on the victim. Prior to the incident dated 23.08.2023, the applicant enticed away the victim on 27.02.2023 also for which a F.I.R. was already lodged, which was registered at Case Crime No. 37 of 2023 for the offence under Sections 363 and 366A I.P.C. He threatened his wife and her family members. Considering the gravity of offence, the bail application of the applicant is liable to be rejected.

6. Having heard learned counsel for the parties and examined the matter in its entirety, I find that victim is minor child aged about 17 years and also sister-in-law of the applicant. The consent of minor child is immaterial under the law. It is a second incident of enticing the minor victim. Marriage of the applicant with the elder sister of the victim was solemnized six years back and from said marriage, he has a girl child. Wife of the applicant is living separately with her daughter in her parental house. In view of Section 29 of the Protection of Children From Sexual Offences Act, presumption shall also be drawn against the accused-applicant unless contrary is proved by the accused.

7. This Court cannot overlook the gravity of the conduct of the applicant, where he is engaged in an illicit relationship with his minor sister-in-law. Such behaviour not only constitutes a breach of the sacred bond of marriage but also represents an egregious violation of familial trust and moral integrity. The sanctity of marriage is a cornerstone of societal and familial harmony, and any act undermining it causes profound emotional and psychological harm. The applicant's actions have inflicted severe traumas upon the wife, shattering her trust and dignity, and have irreparably strained the relationship between two sisters. This Court notes that such behaviour disrupts not just the marital relationship but the broader family unit, leading to discord and instability. The act of the applicant reflects a disregard for these foundational principles and for his responsibilities both as a husband and as a member of the family. Such conduct is unequivocally condemned by both the societal norms and the law.

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8. Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant, criminal history of the applicant, nature of injury and severity of punishment, I do not find any good ground to release the applicant on bail.

9. Accordingly, the bail application is ***rejected***.

10. It is made clear that the observations contained in the instant order is confined to the issue of bail and shall not affect the merit of the trial.

Order Date :- 2.1.2025

Kashifa