

AFR**Court No. - 28****Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 12510 of 2019**Applicant :-** Ramshankar**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Mahesh Singh Yadav, Avdhesh Kumar Singh Yadav, Ganga Sagar Mishra, Ratnesh Singh Tomar**Counsel for Opposite Party :-** G.A., Munni Lal Yadav**Hon'ble Krishan Pahal, J.**

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material placed on record.
2. Applicant seeks bail in Case Crime No.193 of 2019, under Sections 363, 366, 504, 506, 376 IPC & Sections 3/4 of P.O.C.S.O. Act, Police Station Mitauli, District Lakhimpur Kheri, during the pendency of trial.
3. The counsel for the victim is regularly absent since last so many dates. The hearing cannot be stalled on account of non cooperation of one counsel.
4. As per prosecution story, the applicant is stated to have enticed away the minor daughter of the informant in the night of 16/17.05.2018 at about 2:00 am. As per the allegations in the FIR, the date of birth of the victim is stated to be 13.11.2004 and the applicant is stated to have left her alone outside the village on 12.12.2018 i.e. after a period of about six months. The victim was found pregnant at that time and is stated to have given birth to a female child on 31.12.2018.
5. Learned counsel for the applicant has stated that he was madly love with the victim and out of fear of the villagers had eloped with the victim and had undergone marriage in a temple although the said

marriage is not registered. Learned counsel for the applicant has further stated that although the statement of the victim recorded under Section 164 Cr.P.C. is against the applicant, but the same has been garnered out of fear of the family members of the girl. The applicant and the victim belong to the same village and the same community. He further argued that the applicant proposes to rear his child as he is the father and he is very much willing to keep his married wife and the newborn baby with him. 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. The applicant is languishing in jail since 01.10.2019. In case, the applicant is released on bail, he will not misuse the liberty of bail. There are no criminal antecedents of the applicant.

6. Per contra, Sri Girjesh Kumar Dwivedi, learned A.G.A. has vehemently opposed the bail application but has not disputed the fact that out of the said union of the couple, a baby girl was born on 31.12.2018 and she is more than three and half years of age as present, who is being taken care of by the parents of the victim, although he has not disputed the fact that the applicant has no criminal history.

7. The matter shatters the conscious of one and all. What is the fault of the new born baby who has come to world under such circumstances?

8. Admittedly, as per the radiological examination report, the age of the victim is between 18-20 years, which is on record as filed in supplementary affidavit dated 13.01.2022. Thus, the victim can be stated to be major at the time of offence.

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.

12. This Court in the case of *Atul Mishra vs. State of U.P. And 3 others*¹, has also done away with the stringent provisions of the P.O.C.S.O. Act under the extra-ordinary circumstances of the case.

13. Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of *Dataram Singh Vs. State of U.P. and another*², 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.

¹ 2022 (3) ALJ 278

² (2018) 3 SCC 22

14. Let the applicant- **Ramshankar**, 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 is being released on bail on the assurance of the learned counsel for the applicant that he is very much willing to take care of his wife (victim) and the infant. The applicant shall deposit (fixed deposit) a sum of Rs.2,00,000/- in the name of new born child 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 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.

(iii) 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.

(iv) 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.

(v) 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.

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.

Order Date :- 02.06.2022

Ravi Kant