

**Court No. - 66**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 35456 of 2023

**Applicant :-** Javed Alam

**Opposite Party :-** State Of U.P. And 3 Others

**Counsel for Applicant :-** Kumar Beenu Singh, Santosh Kumar

**Counsel for Opposite Party :-** Abhilasha Singh, G.A., Sanjeev Kumar Sharma

**Hon'ble Sameer Jain, J.**

1. Heard Sri Kumar Beenu Singh, learned counsel for the applicant, Sri Sanjeev Kumar Sharma, Advocate appearing on behalf of the victim of the case, Ms. Abhilasha Singh, learned counsel appearing on behalf of High Court Legal Services Authority and Sri Suresh Bahadur Singh, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No.115 of 2023, under Sections 363, 366, 506, 323, 376 IPC & 3/4 POCSO Act & 3/5(1) of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station G.R.P., District Kanpur Nagar, during pendency of the trial.

3. FIR of the present case was lodged by member of Bajrang Dal and according to the FIR, applicant was abducting a Hindu minor girl and girl was crying. It is further mentioned in the FIR that the girl was the student of Class 10th and her date of birth is 30.06.2006. It is further mentioned in the FIR that applicant after enticing away the girl about 8 months before after changing her religion started making physical relationship with her.

4. Learned counsel for the applicant submits that on the basis of false allegation applicant has been made accused in the present matter only due to this reason that he belongs to Muslim community while the victim i.e. girl belongs to Hindu community.

5. He further submits that victim was more than 18 years of age and her marriage was solemnized with the applicant with her consent and during journey in train some dispute arose between husband and wife and in the meantime, members of the Bajrang Dal interfered and handed over the applicant to the police and lodged the FIR.

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6. He further submits that even from the statements of the victim recorded under Sections 161 and 164 Cr.P.C., it reflects that victim had already performed marriage with the applicant. He next submits that during investigation victim herself gave an affidavit that she is major girl and according to her own, she had performed marriage with the applicant and applicant is her husband and affidavit which is the part of the case diary, has been annexed at page 49 of the paper book.

7. He further submits that at the time of lodgement of the FIR, admittedly, victim was more than 17 years of age and at present, she is major girl aged more than 18 years. He next submits that as victim herself wanted to join the company of her husband i.e. applicant, therefore, there is no occasion to detain the applicant in jail any further.

8. He further submits that applicant is not having any previous criminal history and in the present matter, applicant is in jail since 13.05.2023 i.e. last almost one and a half year.

9. Per contra, learned AGA as well as learned counsel appearing on behalf of High Court Legal Service Authority however opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

10. Learned counsel appearing on behalf of the victim also conceded that victim according to her own will had performed marriage with the applicant and she is having no objection if applicant be enlarged on bail. Learned counsel appearing on behalf of the victim further submits that victim wants that applicant should be released on bail so after release, he can perform his matrimonial duties.

11. I have heard learned counsel for the parties and perused the record of the case.

12. It is a case in which member of the Bajrang Dal lodged FIR and members of the Bajrang Dal also after apprehending the applicant handed over him to the police and as per the allegation applicant forcibly was trying to abduct the victim and made physical relations with her in spite of the fact that victim was minor but from the record it reflects that at the time of the lodgement of the FIR victim was more than 17 years of age and from her both the statements recorded under Sections 161 and 164 Cr.P.C., it reflects that she according to her own wish had performed marriage with the applicant and from the record it also

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reflects that during investigation victim herself filed an affidavit that applicant is her husband and she herself according to her own wish had performed marriage with her.

13. Further, even as per learned counsel appearing on behalf the victim she is not having any objection if applicant be enlarged on bail and it reflects that victim is willing to join the company of the applicant and to perform her matrimonial duties. Further, admittedly, at present, victim is major aged more than 18 years.

14. Further, applicant is not having any previous criminal history and in the present matter, applicant is in jail since 13.05.2023 i.e. for last almost one and a half year.

15. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

16. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

17. Let the applicant - **Javed Alam** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

18. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

19. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

**Order Date :- 5.11.2024/S.A.**