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Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11293 of 2024

Applicant :- Ajay Kumar @ Golu @ Sanjay

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home U.P. Lko. And 3 Others

Counsel for Applicant :- Rahul Srivastava, Subham Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

Heard.

Supplementary affidavit filed today is taken on record.

This Court has passed the order dated 24.10.2024, which reads as under:-

"Heard Sri Rahul Srivastava, learned counsel for the applicant and Sri Sani Pratap Singh, learned A.G.A. for the State.

Learned counsel for the applicant has submitted that the applicant is in jail since 22.07.2024 in Case Crime No. 67 of 2024, under Section 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station- Kotwali Tanda, District- Ambedkar Nagar.

Learned A.G.A. has informed that notice has been served upon opposite party No. 2 on 07.10.2024, however, no one has appeared on behalf of opposite party No. 2.

Learned counsel for the applicant has stated that the prosecutrix has got married with the applicant, however, presently, she is living in Shri Ram Audhyogik Anathalaya, Sector- I, Aliganj, Lucknow. He has further submitted that the present applicant is willing to live with the prosecutrix but the family members of the prosecutrix is not permitting her to live her with the applicant.

List this case on 14.11.2024. On that date, the complainant and the prosecutrix shall appear in person before the Court.

The Station House Officer, Police Station- Kotwali Tanda, District- Ambedkar Nagar shall ensure the presence of the complainant.

The Superintendent/ In-charge of the Shri Ram Audhyogik Anathalaya, Sector- I, Aliganj, Lucknow shall ensure the presence of the presence of the prosecutrix on the next date fixed.

Learned A.G.A. shall intimate this order to the Station House Officer, Police Station- Kotwali Tanda, District- Ambedkar Nagar telephonically/ through e-mode/ through WhatsApp etc within 48 hours for necessary compliance of this order.

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The Registry of this Court shall apprise this order to the Superintendent/ In-charge of the Shri Ram Audhyogik Anathalaya, Sector- I, Aliganj, Lucknow telephonically/ through e-mode/ through WhatsApp etc within 48 hours for necessary compliance of this order. "

In compliance of the aforesaid order, the prosecutrix (X) as well as the informant/complainant, namely, Sri Ulfat Ali, who is the father of the prosecutrix along with Constable, Sri Mahendra Yadav from Kotwali Tanda, Ambedkar Nagar and Mahila Head Constable, Ms. Ravindra Pathak from Reserve Police Lines are present in person.

The lady head constable has informed the Court that she has brought the prosecutrix from Raj Balika Grih Sindhi Kheda Para, Lucknow where the prosecutrix has been living presently. Learned counsel for the applicant has demonstrated the statement of prosecutrix which has been filed along with supplementary affidavit, wherein, no allegation as to any kind whatsoever has been levelled against the present applicant. The prosecutrix (X) has submitted that she has already got married with the present applicant in one Hindu temple as per Hindu ritual, though, she is a Muslim girl. She has also submitted that she has got married in a Court also, but no such proof has been shown. She has stated that since she has married with one Hindu person, therefore, his father and other family members have not accepted that marriage, so she is living in Raj Balika Grih Sindhi Kheda Para, Lucknow. She has further submitted that she is willing to live with the applicant. She has stated that she is a major girl aged about 18 years, therefore, she can take any decision in respect of her life. She has not studied in any educational institution, therefore, she is not having any educational documents. Learned counsel for the applicant has stated that as per her radiological age (Annexure No. SA-IV), the Chief Medical Officer, Ambedkar Nagar has determined her age as 16-17 years on 16.04.2024, however, the prosecutrix has again insisted that she has already attained the age of 18 years. The complainant/informant who is also present in the court has stated that if his daughter is saying that she has already got married with the present applicant and she is willing to live with him, he has nothing to say as he has broken all his relation with her.

The learned AGA has stated that this is a case where the applicant is a Hindu by religion and prosecutrix is Muslim by religion, therefore, their valid marriage can be done under Special Marriages Act inasmuch as there is no provision of conversion in the Hindu religion. However, if she has got married in one temple and willing to live with the present applicant, she may do so, if she has already attained the

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marriageable age.

Having heard the learned counsel for the parties and having perused the material available on record and also hearing the parties who are present in person, it appears that so as to protect the life of the prosecutrix for future, the applicant may marry with the prosecutrix under Special Marriages Act, for that he may be granted interim bail for the period of four months.

Let, the applicant- Ajay Kumar @ Golu @ Sanjay be released on interim bail for a period of four months, to be more precise, till 2nd April 2025, in the aforesaid case crime number on his furnishing a personal bond and two sureties of Rs.20,000/- each.

As soon as the present applicant is released from jail, he shall file his appropriate application for getting custody of the prosecutrix and such application may be decided with expedition.

After getting custody of the prosecutrix, he shall take necessary steps to get married with the prosecutrix under Special Marriages Act and after getting married under such provision of law, he shall get the marriage registered before the registering authority.

On the next date, the applicant along with the prosecutrix shall appear in person along with the proof of marriage and marriage registration certificate.

In the meantime, he shall cooperate in the trial proceeding and shall not miss use the liberty of interim bail. Further, the police personnel who have brought the prosecutrix from Raj Balika Grih Sindhi Kheda Para, Lucknow shall handover the custody of the prosecutrix to Raj Balika Grih Sindhi Kheda Para, Lucknow.

Learned counsel for the applicant has submitted that he shall explain the order to the applicant properly so that the direction of this Court could be complied with.

Besides the aforesaid conditions, the applicant shall follow the following conditions during the period of interim bail:-

(i) 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.

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(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 of the Indian Penal Code.

(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. is issued and the applicants fail 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.

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

(v) The applicant shall not leave India without previous permission of the Court.

Considering the conduct of the applicant, the bail application may be disposed of finally on the next date.

Order Date :- 14.11.2024

Anurag