

A.F.R

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27288 of
2023

Applicant :- Adnan

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

Counsel for Applicant :- Sadrul Islam Jafri

Counsel for Opposite Party :- G.A., Afshan Shafaut, Sushil
Kumar Pandey

Hon'ble Siddharth, J.

Heard Shri N.I. Jafri, learned Senior Counsel assisted by Shri S.I. Jafri, learned counsel for the applicant; Shri Sushil Kumar Pandey, learned counsel for the informant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Adnan, with a prayer to release him on bail in Case Crime No. 156 of 2023, under Sections 376, 316, 506 IPC and section 3/4 POCSO Act Police Station Deoband, District-Saharanpur, during pendency of trial.

There is allegation against the applicant that he befriended the victim for the last one year and committed the offence of rape on false promise of marriage for one year of her live-in relationship with him. When victim became pregnant he gave medicine for abortion of foetus. She requested the applicant to marry her then, but he refused to marry her. The applicant made incriminating video of the victim and on the basis of the same he threatened her and committed offence of rape all through against her.

Learned counsel for the applicant has submitted that victim in her statement recorded under section 164 Cr.P.C., has admitted that she was having relationship (live-in) with applicant for one year and entered into physical relation with consent with applicant and got pregnant. Thereafter applicant refused to marry her and First Information Report was lodged against him. She has made allegation that two more persons committed offence of rape against her. As per ossification test report of the victim she has been found to be of 19 years. Therefore she is major not minor.

There is no medical evidence against the applicant of committing offence under section 316 I.P.C. The applicant is in jail since 18.4.2023 and has no criminal history.

Learned counsel for the informant has vehemently opposed the bail prayer of the applicant and submitted that as per school leaving certificate of class VIII, the victim is aged about 16 years and 8 months only. He has further submitted that applicant may be directed to marry the victim since he has spoiled the life of the victim.

Learned senior counsel for the applicant has rejoined and submitted that victim has been married with some other boy therefore there is no possibility of marriage with applicant.

Learned counsel for informant has disputed this argument being against correct factual position.

Learned A.G.A. has also opposed the prayer for grant of bail to applicant but could not dispute the aforesaid facts.

After hearing the rival contentions, this Court finds that this is another case where after enjoying the live-in-relationship the young couple have parted ways. The girl, like in majority of cases, has lodged FIR in vain bid to enter into secure relationship of marriage with the applicant and come within ambit of the socially accepted norms and relationship of marriage.

On the face of it the relationship of live-in sounds very attractive and lures the youth but as the time passes and middle class social morality / norms start staring in their face, such couples gradually, realize that their relationship has not social sanction and it cannot continue for life. They start feeling that in the absence of social acceptance of their relationship, they cannot live a fulfilling and normal social life. Their children will also face social eradication and may blame them for life. Some fortunate ones, who are only exceptions, continue with the same or get married. In majority of cases the break-ups take place between the couple.

After break-up it becomes difficult for the female partner to face the society. The middle class society does not look upon such separated female as normal. From social ostracism to indecent public comments become part of her post-live-in relationship ordeal. Then she somehow tries to get her live-in-relationship with the male partner get converted into relationship of marriage having social sanction. In this bid FIR like the present one comes into

existence. The family members of such female live-in partner desperately try that their daughter / sister gets married to her male live-in partner. While it is not difficult to find another female live-in-partner or wife for the male counterpart of live-in-relationship, it is very difficult for female partner to find a male partner for marriage and the social middle class norms, irrespective of religion of the female partner, militate against her efforts to regain her social status. They do consider a female coming out of such relationship as normal being. Exception apart, no family willingly accepts such a female as their family member. There is no dearth of cases coming to the courts where the female partner of an erstwhile live-in-relationship commit suicide out of disgust caused by social ill behaviour.

The middle class morality cannot be ignored in country like ours. Our country is mostly consisting of middle class. The stability, social, political and economic of a nation depends on the size of middle class only. The morality of the highest class and the lowest class has nothing to do with same since morality dies in riches and chokes in poverty. For the highest class there is no morality and the lowest class cannot afford to follow the same due to compulsions of poverty. The security, social acceptance, progress and stability which the institution of marriage provides to a person is never provided by live-in-relationship. Live-in-relationship shall only be considered as normal after the institution of marriage becomes obsolete in this country, like in many of the so called developed countries where it has become a big problem for them to protect institution of marriage. We are proceedings to create great problem for us in future. There is systematic design to destroy the institution of marriage in this country and destabilize the society and hinder the progress of our country. The films and the T.V serials being aired are contributing to eradicate of institution of marriage. The infidelity to a partner in married relationship and having free live-in-relationship are being shown as sign of progressive society. The youth gets attracted to such philosophy being advanced unaware of the long term consequences. A person not having cordial family relationship cannot contribute to the progress of the nation. He/she is having no anchor in life to bank upon. Hopping from one relationship to other does not leads to any fulfilling existence. The brutish concept of changing partner in every season cannot be considered to be hallmark of a stable and healthy society. The security and stability which the institution of marriage provides to an individual's life cannot be expected from live-in-relationship. The children born from such relationships face lots of problems. When their parents

separate, they became burden on society. They fall in wrong company and national loss of good citizen occurs. In the case of female child born out of live-in-relationship there are other ill affects which are to obvious to be elaborated. Courts came across such cases daily.

The absence of middle class and middle class morality in the Pakistan is ample testimony of the social, political, religious, ethical and other types of unrest. Most of the problems being faced by Pakistan are mainly due to lack of middle class. Middle class has vested interest in maintaining social, political, religious and other orders of society since it has optimum means of fair survival and it does not wants that it should be deprived of the same. Pakistan consists mostly of highest class and poor class. Middle class is not much in that country.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the recent judgment dated 11.07.2022 of the Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials 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

Let the applicant 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.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

4. That the applicant shall not, directly or indirectly, make any 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 to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his 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.

Order Date :- 29.8.2023

Atul kr. sri.