

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 321 of 2023

Applicant :- Satyendra Kumar

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

Counsel for Applicant :- Lalit Kishore Tiwari, Karuna Shankar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, of Sri Ran Vijay Singh, learned A.G.A. for the State and perused record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.458 of 2022 under Section 376AB IPC and Section 5/6 POCSO Act, PS Madion district Lucknow.
3. Learned counsel for the applicant has submitted that statement of mother of the prosecutrix was recorded under Section 164 CrPC at the relevant time because the prosecutrix was 5 years of age as she could not speak. The mother of the prosecutrix in her statement under Section 164 CrPC has stated that private part of her daughter was ruptured and blood was oozing. In the morning, one man came and asked for match box from her husband and she saw that the person was having mud over his body and the chain of his pant was open, therefore, he was beaten by many person. Thereafter, he was brought to the police station but the applicant has not been named in the statement under Section 164 CrPC and only on the basis of doubt, he was made accused.
4. It has been submitted by the learned counsel for the applicant that PW-2 mother of prosecutrix has been examined before the Trial Court and she has been declared hostile. She has deposed before the Court that a person was caught by the people of the locality and he was brought to the police station. Thereafter, she deposed that person standing in the witness box, has not committed anything. She has further deposed that she was not sure that the offence was committed by the applicant. Thereafter, she has been declared hostile. PW-3 father of the prosecutrix has also been examined and he has deposed that the applicant was found in intoxicated state and his whole body was

wrapped with mud and lastly he has stated that the applicant did not do anything wrong and he further deposed before the Court that he did not want to implicate an innocent person.

5. Learned counsel for the applicant has further submitted that DNA report has also come in record and the same is filed along with the supplementary affidavit dated 1.11.2023 and the DNA sample of the applicant is not matching with the sample of the prosecutrix.

6. Learned counsel for the applicant has further submitted that after looking into the statement of PW-1, PW-2 and PW-3, and also the DNA report, it cannot be inferred that the applicant was involved in commission of crime. He has further submitted that there is no likelihood of trial being concluded in near future. He has further submitted that the applicant has no other criminal history and he is in jail since 21.8.2022.

7. On the other hand, learned A.G.A. opposed the prayer for bail but could not dispute the fact that the mother of the prosecutrix has been declared hostile and father of the prosecutrix has not supported the prosecution case and the DNA sample of the applicant is not matching with the DNA sample of the prosecutrix.

8. Considering the over all facts and circumstances of the case, the argument that the mother of the prosecutrix has been declared hostile and father of the prosecutrix has not supported the prosecution case and the DNA sample of the applicant is not matching with the DNA sample of the prosecutrix, it is a fit case for bail.

9. Let the applicant, namely, Satyendra Kumar be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(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.

(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 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 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.

10. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 23.11.2023
Rajneesh JR-PS)