

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 435 of 2023

Applicant :- Pawan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko.
And 3 Others

Counsel for Applicant :- Sanjay Singh Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Rajesh Kumar Singh learned A.G.A.-I for the State and perused record.
2. In compliance of order of this Court dated 26.9.2023, Sri Krishna Mani Yadav, Deputy Director, D.N.A., Vidhi Vigyan Prayogshala, Mahanagar, Lucknow is present in person and he has filed his personal affidavit. The same is taken on record. His explanation is sufficient. His personal appearance is exempted. He need not appear in person.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.376 of 2022 under Section 376-D IPC and Section 5 (Chha)/6 POCSO Act, PS Reusa district Sitapur.
4. Learned counsel for the applicant has invited attention of this Court towards the cross-examination of PW-2 prosecutrix who has deposed before the Court that she had gone on the call of nature and co-accused Bhuraoo overpowered her and established physical relation upon her by gagging her. She has not stated anything adverse against the applicant rather, she has stated in the cross-examination that applicant did not do anything wrong against her. She has further deposed that she had not named the applicant in any manner and she also did not tell the name of the applicant to her father. She further deposed that she had implicated the applicant at the behest of her uncle Ramesh and gave statement under Section 161 CrPC and 164 CrPC against the applicant otherwise, the applicant had not committed any offence against her. Learned counsel for the applicant has submitted that PW-1 father of the prosecutrix has also been examined before the Trial Court and he also not supported the prosecution case against the applicant and he has supported the prosecution case against the co-accused Bhuraoo. He has further submitted that as per DNA report which is filed

today, it is clear that blood sample of applicant is not matching with the blood of prosecutrix and her daughter. It has been submitted by the applicant that at the moment it cannot be inferred that the applicant was involved in commission of crime and he has been falsely implicated. He has further submitted that trial cannot be concluded in near future. He has submitted that the applicant has no criminal history and he is in Jail since 2.10.2022.

5. Learned A.G.A. has opposed the prayer for bail but could not dispute the fact that the prosecutrix PW-1 and PW-2 father of the prosecutrix have not supported the prosecution case against the applicant and the DNA report is not matching with the blood of applicant and the blood of prosecutrix as well as her daughter, it is a fit case for bail.

6. Considering over all facts and circumstances of the case, the the argument that the prosecutrix PW-1 and PW-2 father of the prosecutrix have not supported the prosecution case against the applicant and the DNA report is not matching with the blood of applicant and the blood of prosecutrix as well as her daughter, it is a fit case for bail.

7. Let the applicant, Pawan 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.

8. 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 :- 13.10.2023
Rajneesh JR-PS)