

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1185 of 2023

Applicant :- Vijay Rawat Alias Vijay Kumar

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

Counsel for Applicant :- Mohd. Rafi Khan,Jay Mangal Sharma,Sudha Verma

Counsel for Opposite Party :- G.A.,Anand Kumar,Arshad Siddiqui

Hon'ble Brij Raj Singh,J.

1. Heard Shri Jay Mangal Sharma, learned counsel for the accused-applicant, Shri Arshad Siddiqui, learned counsel for complainant as well as Shri Vishwas Saraswat, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Vijay Rawat Alias Vijay Kumar** on bail, who is involved in Case Crime No. 335 of 2022 under Sections 376, 506 I.P.C and 3/4 POCSO Act, Police Station Kursi, District Barabanki.

3. Learned counsel for the applicant submitted that mother of prosecutrix lodged the First Information Report alleging that the applicant molested her daughter on 28.09.2022, but no allegation of rape has been levelled in the F.I.R. However, the statement of prosecutrix was recorded under Section 164 Cr.P.C. wherein the version of F.I.R has been changed and she has improved her version and has stated that on 30.09.2022, she had gone for nature's call, where she was overpowered by the applicant and was raped by him. Learned counsel for applicant further submitted that the version of F.I.R and the statement under Section 164 Cr.P.C are contradictory to each other and also the mother of prosecutrix, while lodging the F.I.R, has not mentioned anything about the physical assault.

4. Learned counsel for the applicant has drawn attention of the Court towards the medical report of the prosecutrix which indicates that her hymen is intact and no spermatozoa is found, the age of the girl is 15 years and he further submitted that if rape was committed with the prosecutrix, then her hymen would have been ruptured. He further submitted that the statement of prosecutrix recorded under Section 164 Cr.P.C indicates that the prosecutrix was raped in the house of the applicant, but in the statement of mother of the prosecutrix, it has come on record that the applicant has no house, rather he lives in thatched house. He further submitted that the medical report as well as the statement of prosecutrix are totally

not supporting the prosecution case and there is no coherence. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 11.10.2022.

5. Shri Jay Mangal Sharma, learned counsel for applicant has made a statement that the applicant is not minor and the trial is going on treating him a major. In paragraph-30 of the bail application, the fact is wrongly mentioned that the applicant is minor.

6. Both learned A.G.A and learned counsel for complainant have opposed the prayer of bail of the applicant and have submitted that the statement of prosecutrix under Section 164 Cr.P.C indicates that allegation of rape is levelled against the applicant. They further submitted that even if the medical report is not supporting the prosecution case, a single testimony of the prosecutrix is sufficient to convict the applicant.

7. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that there is changed of version between the F.I.R and the statement of prosecutrix under section 164 Cr.P.C, the argument that in the F.I.R, no allegation of rape has been levelled and allegation of molestation is levelled against the applicant, however, the case was improved later on under Section 164 Cr.P.C by the prosecutrix, the argument that the medical report is not supporting the prosecution case because as per medical report, hymen is intact and no spermatozoa is found, I find it to be a fit case for grant of bail.

8. Accordingly, the bail application is **allowed**.

9. Let the applicant **Vijay Rawat Alias Vijay 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 her 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 :- 10.10.2023
DiVYa