

Court No. - 8

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2086 of 2023

Applicant :- Shamshad

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

Counsel for Applicant :- Syed Ahmad Mehdi, Prashant Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Prashant Dubey, learned counsel for the accused-applicant and Si Brijendra Vikram Singh, learned A.G.A. and perused the record.
2. This is the second bail application. First bail application got rejected by this Court vide order dated 11.10.2022 passed in Criminal Misc. Bail Application No.13703 of 2021.
3. The present application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No.150 of 2021, under Sections 376 and 506 IPC and Section 3/4 POCSO Act, Police Station Haiderganj, District Ayodhya.
4. The prosecutrix was around 14 years of age when the alleged incident took place. The prosecutrix is the complainant, who specifically alleged the commission of offence of rape by the accused-applicant. The prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has fully supported the prosecution case. Even her evidence recorded before the trial court in examination-in-chief also supports the prosecution case. Accused-applicant was 30 years of age, who allegedly committed rape upon the prosecutrix. The trial is going on.
5. Learned counsel for the accused-applicant submits that prosecutrix has been examined in the court and her evidence has been brought on record. He further submits that evidence of

the prosecutrix is not consistent. The prosecutrix has not identified the accused-applicant and she has said that the FIR in question was lodged on asking of the villagers. Accused-applicant has been in jail since 6.8.2021.

6. Learned AGA has opposed the prayer for bail, but not disputed the aforesaid facts.

7. Considering the above facts and circumstances of the case, coupled with the contentions raised by the learned counsel for both sides, and without entering into the merit of the case, the applicant is entitled to be released on bail.

8. Let applicant **Shamshad** 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 will not move any application under Section 311 Cr.P.C. to recall any of the witnesses of fact, who have been examined in the court, including the prosecutrix.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

Order Date :- 26.5.2023

Rao/-