

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2521 of 2023

Applicant :- Virendra

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

Counsel for Applicant :- Srees Kumar
Srivastava, Sukhveer Singh

Counsel for Opposite Party :- G.A., Vinod Kumar

Hon'ble Brij Raj Singh, J.

1. Heard Shri Sukhveer Singh, learned counsel for the accused-applicant as well as Shri Asif Khan, learned A.G.A. for the State and perused the record.

2. Notice has been served on opposite party no. 2, but none is present before the Court.

3. This is the second bail application. The first bail application was rejected by Hon'ble Ram Krishna Gautam, J, vide order dated 09.03.2022.

4. This bail application has been filed seeking release of the accused/applicant **Virendra** on bail, who is involved in Case Crime No. 136 of 2021 under Sections 376 DB, 504 I.P.C & Section 5m,6 POCSO Act, Police Station Barasagwar, District Unnao.

5. Learned counsel for the applicant submitted that the fact witnesses including the prosecutrix has been examined before the trial Court and a new cause of action has arisen therefore, second bail application has been filed by learned counsel for applicant. He further submitted that P.W-1, father of the prosecutrix, in his cross-examination, has not supported the prosecution case. Similarly, P.W-2, the prosecutrix, in her cross-examination, has also not supported the prosecution case. The prosecutrix deposed before the Court that the applicant did not do anything wrong with her, neither he gagged her mouth nor he unclothed her. Learned counsel for applicant further submitted that P.W.-3, the mother of prosecutrix has been declared hostile by the trial Court and fact witness namely Suman (P.W.-4) has also been examined before the trial Court. Though in her examination-in-chief, P.W.-4 Suman has supported the prosecution case, but in her cross-examination, she has not supported the prosecution case and has deposed that the applicant did not do anything wrong with her nor with the prosecutrix of the present case. She has denied the entire version of F.I.R and has further stated that the police did not record her statement.

6. Learned counsel for the applicant submitted that the fact witnesses have been examined and there is no question of tampering of evidence or any kind of threat to the fact witnesses. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 25.09.2021.

7. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that the prosecutrix was minor at the relevant time and the statement of prosecutrix recorded under Section 164 Cr.P.C before the trial Court indicates that the applicant and her family members have pardoned the applicant, which indicates that the applicant actually committed wrong with the prosecutrix, therefore, bail is liable to be rejected.

8. 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 the argument that all the fact witnesses have been examined and P.W-1, father of prosecutrix, P.W.-2, the prosecutrix, P.W.-4, Suman, in their cross-examination have not supported the prosecution case and P.W.-3, the mother of prosecutrix has been declared before the trial Court, the argument that the applicant is languishing in jail for more than two years and also the argument that there is no question of tampering of evidence nor any kind of threat to the fact witnesses as all the fact witnesses have already been examined, I find it to be a fit case for grant of bail.

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

10. Let the applicant **Virendra** 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.

11. 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 :- 8.11.2023
DiVYa/Harshita