

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2530 of 2023

Applicant :- Toteram

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

Counsel for Applicant :- Santosh Kumar Kanaujia, Mahendra Kumar Sharma, Vinay Pratap Singh Rathore

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Santosh Kumar Kanaujia, learned counsel for the applicant, Shri Ranvijay Singh, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.478 of 2022 under Sections 376, 506 IPC., Police Station Kheri, District Lakhimpur Kheri.

3. Learned counsel for the applicant submitted that victim lodged FIR stating that on 14.07.2022 she had gone to the house of co-accused Ramesh where applicant overpowered her along with co-accused Ramesh and both of them have committed rape against her. Learned counsel has invited attention of this Court towards the statement under Section 164 Cr.P.C. in which prosecutrix has deposed that on 14.07.2022 her friend Komal, daughter of Ramesh had taken her to her house and she shut the door and ran away and thereafter rape was committed by Ramesh (father of Komal) and present applicant. Learned counsel has further submitted that prosecution case is quite unbelievable because Komal is the daughter of Ramesh and it is totally unnatural that daughter would shut the door and assist her father in committing rape against the prosecutrix, who is her friend. Learned counsel submitted that incident took place on 14.07.2022 but the FIR has been lodged on 04.10.2022 which is highly belated and medical report is also not supporting the prosecution case. Learned counsel further submitted that name of co-accused Ramesh was dropped out and charge sheet was filed only against the applicant. The applicant has no criminal history and is in jail since 13.11.2022.

4. Learned AGA has opposed the prayer for bail and has submitted that the statement of the prosecutrix recorded under section 164 Cr.P.C. indicates that rape was committed therefore, bail of the applicant is liable to be rejected.

5. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and

considering the argument that there is delay in lodging the FIR; argument that there is contradiction between the statement of the prosecutrix recorded under section 164 Cr.P.C. and version of the FIR ; argument that medical report is also not supporting the prosecution case, I am of the opinion that the applicant is entitled to be released on bail.

6. Let the applicant, **Toteram** 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.

7. 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 :- 30.10.2023

Pks