

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2819 of 2023

Applicant :- Lalit Kishore Sharma

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt U.P. Lko. And 4 Others

Counsel for Applicant :- Jalaj Kumar Gupta, Prabhaat Kumar Tripathi

Counsel for Opposite Party :- G.A., Anurudh Kumar Singh, Ram Briksh Yadav, Vishant Singh Yadav

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant and learned A.G.A for the State and perused the record.
2. This bail application has been filed seeking release of accused/applicant, namely, **Lalit Kishore Sharma** on bail, in Case Crime No.0303 of 2022, under Sections 363, 366D I.P.C and Section 5/6 of Protection of Children from Sexual Offences Act, Police Station- Utraula, District- Balrampur.
3. Learned counsel for the applicant has invited attention to the statement of the prosecutrix recorded under Section 164 CrPC in which she has deposed that without telling her family members, she had gone to Pipra where Lalit met with her. She further deposed that she was familiar with the applicant for the last three years and she was made girlfriend by the applicant and she was happy with the company of the applicant. She used to go along with him outside and physical relation was also established out of her own free will. In the later part of the statement recorded under Section 164 CrPC, she has levelled allegation against the applicant that on the date of the alleged incident, the applicant asked her to establish physical relationship in front of his friend, namely, Rohit but when she objected, he forcefully established physical relation with her in front of his friend and also asked his friend to join. When she made hue and cry, he left her near the market and went away.
4. Learned counsel for the applicant further submitted that after 18 days of the alleged incident, the F.I.R was lodged by the mother of the prosecutrix on 11.11.2022 whereas the date of incident was 24.10.2022, in which she stated that the applicant had committed rape with her daughter.

5. It is further submitted by the learned counsel for the applicant that a false F.I.R. was lodged against the applicant after unexplained delay of 18 days which itself shows that the prosecutrix had herself gone with the applicant and physical relation was established by her own free will and that false allegations have been made against the applicant with ulterior motive. He further submitted that as per the radiological report of the Chief Medical Officer, Balarampur, the age of the prosecutrix is about 20 years and she is major. Medical examination of the prosecutrix has been done but no external injury is found on the person of the prosecutrix. Learned counsel further stated that there is no criminal history of the applicant and he is in jail since 19.11.2022.

6. Learned A.G.A. has, however, opposed the prayer for grant of bail and has submitted that it is a case of rape because the prosecutrix is below 18 years of age thus, the applicant does not deserve the mercy of the Court and not entitled to be granted bail.

7. Considering the overall facts and circumstances of the case, perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that the prosecutrix was in relation with the applicant, the argument that the F.I.R. was lodged after unexplained delay of 18 days, the argument that the prosecutrix in her statement recorded under Section 164 Cr.P.C deposed that she was familiar with the applicant for the last about three years and had also established physical relation with the applicant by her own free will prior to the alleged incident, and also the fact that as per the radiological report, the age of the prosecutrix is about 20 years and she is major, the fact that in the medical report, no external injury is found on the person of the prosecutrix, the argument that the applicant has no prior criminal history and he is in jail since 19.11.2022, I find it to be a fit case for grant of bail.

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

9. Let the accused/applicant, namely, **Lalit Kishore Sharma** be released on bail in the aforementioned 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 :- 30.10.2023

Manoj K.