

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3632 of 2023

Applicant :- Goverdhan @ Gobbar

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

Counsel for Applicant :- Vishwesh Pratap Singh, Rakesh Gupta

Counsel for Opposite Party :- G.A., Ramesh Kumar Mishra

Hon'ble Brij Raj Singh, J.

1. Counter affidavit filed on behalf of complainant is taken on record.
2. Heard Shri Vishwesh Pratap Singh, learned counsel for the applicant, Shri Ramesh Kumar Mishra, learned counsel for the complainant and Shri Hari Shankar Maurya, learned AGA for the State and perused the record.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.648 of 2022, under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Gurubuxganj, District Raebareli.
4. Learned counsel for the applicant has submitted that FIR has been lodged by father of the prosecutrix under Sections 363, 366 IPC and he has levelled allegation against the applicant that he had enticed away his daughter. Learned counsel submitted that the incident took place on 18.10.2022 and FIR was lodged on 22.10.2022. Thereafter, prosecutrix was recovered on 23.10.2022 and her statement was recorded under Section 161 Cr.P.C. in which she has deposed that she had gone to see Nautanki (drama) where she met the applicant and he asked her to come to his house and thereafter she had gone to his house and she remained in the house of the applicant, who thereafter established physical relation. Thereafter she was dropped by him on 21.10.2023 and she returned to her house.
5. Learned counsel further submitted that under Section 164 Cr.P.C. the prosecutrix has stated that on 18.10.2022 she had gone to ease out and applicant caught hold her and committed rape in jungle by making her to consume drug. She has further deposed that that after rape when she regain consciousness, applicant had taken her to his house and thereafter to his sister's house.

6. It has been submitted by learned counsel for the applicant that after looking to the statement under Section 164 Cr.P.C. it is evident that it is a case of consent as the prosecutrix herself has admitted that she had gone to the house of the applicant after physical relation. Learned counsel submitted that she has not raised any alarm and remained quiet for 4-5 days which is quite unnatural. He has invited attention of this Court towards the ossification test which shows that the age of the prosecutrix is 17-18 years though as per school certificate, she is 16 years 5 months and one day at the time of occurrence. After ossification test, it is clear that she was major at that time as such it is a case of consent. The applicant has no criminal history and is languishing in jail since 29.10.2022.

7. Learned AGA as well as learned counsel for the complainant opposed the prayer for bail and submitted that after looking to the statement of the prosecutrix recorded under Section 164 Cr.P.C., it is clear that rape was committed by the applicant in a field and thereafter she was made captive by him for 4-5 days as such applicant committed sexual offence therefore, bail is liable to be rejected.

8. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking to the argument that it is case of consent, argument that medical report indicates that the prosecutrix was major at the time of incident; argument that statements of 161 and 164 Cr.P.C. are contradictory to each other as such I am of the view that the applicant may be released on bail.

9. Let the applicant, **Goverdhan @ Gobbar** 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.

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 :- 18.12.2023

Pks