

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4318 of 2023

Applicant :- Anuj Saroj

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

Counsel for Applicant :- Amar Nath Dubey, Anil Kumar Yadav, Gyan Singh, Jaikaran

Counsel for Opposite Party :- G.A., Lalji Yadav

Hon'ble Brij Raj Singh, J.

1. Heard Sri Gyan Singh, learned counsel for the applicant and Sri Ran Vijay Singh, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 275 of 2022 (Special Trial No.1465 of 2022) under sections 376 IPC and Section 3/4 of POCSO Act, Police Station Sangramgarh, District Pratapgarh.

3. It has been submitted by learned counsel for the applicant that father of the prosecutrix lodged FIR under sections 354(ka), 354(Kha), 504, 506 IPC and 7/8 of POCSO Act leveling the allegation that his 17 years old daughter was sleeping on the top of the roof and the applicant came over there and tried to uncloth and molest her. Learned counsel for the applicant has submitted that same versions have been reiterated by the prosecutrix as well as the complainant in the statement recorded under section 161 Cr.P.C. He further submitted that the incident took place on 30.09.2022 but the FIR was lodged on 16.10.2022 i.e. after 16 days of the incident and the statement of the prosecutrix was recorded under section 164 Cr.P.C. after one month i.e. on 31.10.2022 wherein she changed version of the FIR as well as statement recorded under section 161 Cr.P.C. and has levelled allegation that the applicant came to the roof and had committed rape upon her. Learned counsel for the applicant has submitted that it is an improved version and there are various contradiction between the FIR, statement of the prosecutrix recorded under section 161 Cr.P.C. and the statement of the prosecutrix recorded under section 164 Cr.P.C. Learned counsel for the

applicant has submitted that as per medical report the age of the prosecutrix is in between 16-17 years and the benefit of two years outer age limit may be extended to the application inferring that the prosecutrix was major at the relevant time. He has also submitted that the medical report is not supporting the prosecution case and the applicant has been falsely implicated in the present case. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 14.11.2022.

4. Learned A.G.A. has opposed the prayer for bail and has submitted that as per medical report, the prosecutrix was minor at the relevant time as such the applicant is not entitled to be released on bail.

5. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the prosecutrix improved the version of the FIR and levelled allegation of rape after one month from the date of incident otherwise FIR was lodged for molestation, the argument that the applicant has been falsely implicated in the present case and the medical report is not support the prosecution case, therefore, I am of the opinion that the applicant is entitled to be released on bail.

6. Let the applicant, namely, **Anuj Saroj**, 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.

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 :- 17.11.2023

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