

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5414 of 2023

Applicant :- Indrapal @ Khabhu

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

Counsel for Applicant :- Shailesh Kumar Singh, Brijesh Kumar, Shobh Nath Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Rajnish Kumar Verma, learned A.G.A. for the State and perused record.
2. Learned AGA has annexed paper indicating service of notice on O.P. No.2 as Annexure No.CA-1 to the counter affidavit. No one is present for O.P. No.2.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.21 of 2023 under Section 376 IPC and Section 3/4 of POCSO Act, PS Kotwali Sadar, district Lakhimpur Kheri.
4. Learned counsel for the applicant has submitted that PW-1 who is brother of the prosecutrix, has not supported the prosecution case in the cross-examination and the PW-2 prosecutrix has also not supported prosecution case in the cross-examination. She has deposed before the Court that she had gone to the field and the applicant did not meet with her and he did not overpower her. She further deposed that she did not know as to who did wrong thing against her. She has further deposed that the applicant standing in the witness-box, is known to her but he neither committed rape nor molestation was done by him. She further deposed that on the behest of police, she had given statement under Section 164 CrPC before the Magistrate. She denied entire version of prosecution case. Similarly, PW-1 who is complainant, has also reiterated same thing.
5. Learned counsel for the applicant has submitted that after looking into the statement of the PW-1 and 2, at the moment, it cannot be inferred that the applicant was involved in commission of crime. He has further submitted that trial is not likely to be concluded in near future. He has submitted that the applicant has no criminal history and he is in Jail since 6.1.2023.
6. On the other hand, learned A.G.A. opposed the bail but could not dispute the PW-1 and 2 have not supported the prosecution case in cross-examination.
7. Considering over all facts and circumstances of the case, the argument that PW-1 and 2, the brother has not supported the prosecution case, similarly, PW-2 has also not supported the prosecution case in cross-examination and she has not

levelled allegation of rape, therefore, it is a fit case for bail.

8. Let the applicant, Indrapal @ Khabbu 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.

9. 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 :- 7.11.2023

Rajneesh JR-PS)