

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6477 of 2023

Applicant :- Neeraj

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

Counsel for Applicant :- Rajesh Kumar

Counsel for Opposite Party :- G.A., Shashank Agnihotri

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Shani Pratap Singh, learned A.G.A. for the State and perused record.
2. This bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.0375 of 2022 under Section 376, 328, 506 IPC and Section 3/4 of POCSO Act, PS Subeha, district Barabanki.
3. Learned counsel for the applicant has submitted that as per version of FIR, the incident took place on 15.8.2022 and complainant, the father of the victim moved application under Section 156 (3) CrPC on 3.10.2022 near about after one and half months and the FIR was lodged on 12.12.2022. It has been submitted that the version of FIR is quite unnatural wherein the father complainant has stated that he and his family members were sleeping in the night and the applicant came and took her away by sniffing some psychotropic substance.
4. Learned counsel for the applicant has submitted that statement of prosecutrix was recorded under Section 164 CrPC on 17.12.2022 and the prosecutrix has deposed before the Court that she was made unconscious by the applicant and she was gagged also, thereafter, when she gained conscious, she found herself naked lying in a ditch. It has been submitted that in the statement under Section 164 CrPC, there is no allegation of rape and he has submitted that this fact is further fortified on the ground that the prosecutrix and her family members refused for medical examination and he has filed document Annexure No.5 to the bail application which indicates that the prosecutrix and her parents have refused for internal and external medical examination. It has been submitted that the statement under Section 164 CrPC does not indicate that rape was committed by the applicant and, once, the medical examination has been refused, it cannot be presumed that applicant was involved in

commission of crime. He has further submitted that due to village enmity, the applicant has been implicated.

5. Learned counsel for the applicant has further submitted that in the statement of witnesses Shiv Bahadur and Chhotu, it has come on record that the prosecutrix was weeping before her mother and was taking name of applicant that he had committed rape upon her but he has submitted that once the prosecutrix and her family members have refused for external and internal medical examination, and there was occasion to state the real fact before the Court while statement under Section 164 CrPC was recorded, but she did not say anything regarding rape, therefore, the statements of the two witnesses cannot be believed. He has further submitted that the applicant is in Jail since 22.12.2022 and he has no other criminal history.

6. On the other hand, learned A.G.A. has opposed the bail and has submitted that other two witnesses Shiv Bahadur and Chhotu have stated in their statement under Section 161 CrPC that the prosecutrix was weeping in front of her mother and was saying that she was raped by the applicant, therefore, the bail is liable to be rejected.

7. Considering over all facts and circumstances of the case, the argument that under Section 164 CrPC, the prosecutrix, there is no allegation of rape, the argument that the prosecutrix and her family members have refused for external and internal medical examination which could be the basis for ascertaining the allegation of physical assault on the prosecutrix, it is a fit case for bail.

8. Let the applicant, Neeraj 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 :- 27.10.2023
Rajneesh JR-PS)