

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6626 of 2023

Applicant :- Ramvilas

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

Counsel for Applicant :- Dinesh Kr. Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant and Sri M.V.S. Chauhan, learned A.G.A. for the State.

2. The present second bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.60 of 2021 under sections 363, 366-A, 376 IPC & 3/4 POCSO Act, Police Station Sadullanagar, District Balrampur.

3.It has been submitted by learned counsel for the applicant that this is second bail application as the first bail application bearing Criminal Misc. Bail Application No.12139 of 2021 was rejected by this Court on 22.03.2022. When the first bail application was rejected, the witnesses were not examined. Learned counsel for the applicant has submitted that fact witnesses namely, complainant (P.W.-1) and the prosecutrix (P.W.-2) have been examined after rejection of the first bail application.This is second cause of action that is why the present second bail application has been filed.

4. Learned counsel for the applicant has invited attention of this Court towards the statement of the Smt. Tara Devi/ complainant (P.W.-1). She deposed before the court that at the behest of villagers she lodged FIR against the applicant and she denied the version of the FIR as well as the statement recorded under section 161 Cr.P.C. She further deposed before the court that on blank paper her signature was obtained by the police and the fact was not stated before her by the police when her granddaughter came back to her house she told that she had gone to her uncle's house at Lucknow. She also deposed before the court that neither the applicant entice her nor abducted the prosecutrix. Learned counsel for the applicant has

further submitted that the statement of Seema/prosecutrix (P.W.-2) has been recorded and she has been declared hostile. She has clearly stated in her statement that her signature was obtained on the blank paper. She also deposed that on the pressure created by the police, she had made statement against the applicant under section 164 Cr.P.C. and she has denied the entire version of the prosecution case against the applicant in her cross-examination. Learned counsel for the applicant has submitted that after looking into the statement of complainant (P.W.-1) and the prosecutrix (P.W.-2) at the moment it cannot be inferred that the applicant is involved in the commission of crime. 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 17.05.2021.

5. Learned A.G.A. though opposed the prayer for bail but could not dispute the fact that the complainant (P.W.-1) has not supported the prosecution case and the prosecutrix (P.W.-2) has been declared hostile.

6. 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 Smt. Tara Devi/complainant (P.W.-1) has not supported the prosecution case and the Seema/prosecutrix (P.W.-2) has been declared hostile, therefore, I am of the opinion that the applicant is entitled to be released on bail..

7. Let the applicant, namely, **Ramvilas**, 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 :- 17.10.2023

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