

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6776 of 2023

Applicant :- Jamuna

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

Counsel for Applicant :- Diwakar Shukla, Gyanoday Shukla, Rahul Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, M.V.S. Chauhan learned A.G.A.-I for the State and perused record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.663 of 2022 under Section 376-D, 344, 366, 323, 370 IPC, PS Khairi Ghat, district Bahraich.
3. Learned counsel for the applicant has submitted that earlier, the father of the prosecutrix has lodged FIR on 20.2.2022 in which he has mentioned that his daughter has been enticed away by Pavan Kumar and four others who had assisted him. It has been submitted by the learned counsel for the applicant that the girl was recovered and thereafter, she was given to parents custody. Thereafter, the present FIR has been lodged on 20.10.2022 by the victim herself and her statement under Section 164 CrPC was also recorded in which she deposed before the Court that she was illiterate and prior to two months, she had gone to Court along with her parents and she was beaten by them. She has further stated that she has married with Pavan. However, her parents sent her to the son-in-law of her Mausi where she remained for 20 days and she was sold for Rs.1,00,000/- to Meva Lal who committed rape against her. However, she further stated that the applicant also committed rape against her.
4. Learned counsel for the applicant has submitted that the applicant has been falsely implicated. The prosecutrix is major and she has refused for medical examination. He has submitted that the applicant has been implicated for the reason that the prosecutrix wants to live along with Pavan as his wife which has been opposed by her parents and the applicant is relative of prosecutrix. He has satisfactorily explained the criminal history

of the applicant in para-20 of the bail application. He has submitted that the applicant is in Jail since 22.2.2023.

5. Learned A.G.A. though opposed the prayer for bail and has submitted that statement under Section 164 CrPC of the prosecutrix has been recorded which indicates that rape has been committed against the prosecutrix and the bail is liable to be rejected.

6. Considering over all facts and circumstances of the case, the argument that it is a case of false implication because earlier, the father of prosecutrix had lodged FIR naming Pavan Kumar but later on, the prosecutrix herself lodged FIR naming applicant who is admittedly, the son-in-law of the Mausi of prosecutrix, the argument that prosecutrix was major at the relevant time and she had refused for medical examination, it is a fit case for bail.

7. Let the applicant, Jamuna 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.

8. 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 :- 12.12.2023

Rajneesh JR-PS)