

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8552 of 2022

Applicant :- Nasir

Opposite Party :- State Of U.P. Through Secretary, Home And 4 Others

Counsel for Applicant :- Rizwanul Haque Ansari, Dheerendra Kumar Singh

Counsel for Opposite Party :- G.A., Dr. Shailendra Sharma, Shitesh Jha

Hon'ble Brij Raj Singh, J.

1. Case called out. Sri Rizwanul Haque Ansari and Dheerendra Kumar Singh, learned counsel for the applicant are present. None is present for the complainant.

2. Heard learned counsel for the applicant, Sri Divakar Singh, learned A.G.A.-I for the State and perused record.

3. The present bail application has been filed by the applicant with a prayer for bail in Case Crime No.258 of 2022 under Section 363, 366, 376-D IPC, and Section 5g/6 of POCSO Act, PS Dhaurahra district Lakhimpur Kheri.

4. Learned counsel for the applicant has invited attention of this Court towards statement of PW-2 prosecutrix who has been examined before the Trial Court. In cross-examination, she has not supported the prosecution case and she has deposed that she was married prior to one year and she had gone to her Bua's house and the applicant and co-accused did not entice her. She further stated that they did not commit rape upon her. She further deposed that she had gone to her Bua's house out of her own will and the applicant did not commit rape against her. She deposed that on the threat and behest of the villagers, she had given statement against the applicant. She has further deposed that police got blank papers signed from her father and the police never took her statement. She has denied entire version in cross-examination. Similarly, PW-1 father of the prosecutrix has also not supported the prosecution case before the Trial Court. He has further submitted that after looking into the statement of PW-1 and PW-2, it cannot be inferred that the applicant was involved in commission of crime. He has further submitted that the applicant has no other criminal history and he is in jail since 23.5.2022.

5. Learned A.G.A. though opposed the prayer for bail but could not dispute the fact that the PW-1 and PW-2, the father and prosecutrix have not supported the prosecution case.

6. Considering over all facts and circumstances of the case, the argument that the PW2 prosecutrix and PW-1 her father have not supported the prosecution case, it

is a fit case for bail.

7. Let the applicant, Nasir 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 :- 20.12.2023

Rajneesh JR-PS)