

Court No. - 8

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7860 of 2023

Applicant :- Aman

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

Counsel for Applicant :- Alok Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh,J.

1. Heard learned counsel for the applicant as well as Sri Bhanu Pratap Singh, learned A.G.A. and perused the record.
2. This is the second bail application. First bail application got rejected by this Court vide order dated 30.5.2022 passed in Criminal Misc. Bail Application No.260 of 2022.
3. The present application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No.140 of 2021, under Section 376-D IPC and Section 3/4 POCSO Act, Police Station Auras, District Unnao.
4. Allegation against the accused-applicant and two other co-accused is raping the prosecutrix, aged around 13 years, on 26.5.2021. Radiological age of the prosecutrix has been determined to be 17 years. The prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has fully supported the prosecution case. The prosecutrix has specifically named the accused-applicant and two other co-accused of committing rape on her on the date of incident in her statements recorded under Sections 161 and 164 Cr.P.C.
5. Though the prosecutrix supported the case in her statements recorded under Sections 161 and 164 Cr.P.C., but in her evidence during trial, she has not supported the prosecution

case against the accused-applicant, and she has been declared hostile. Accused-applicant has been in jail since 10.6.2021.

6. Learned AGA has opposed the prayer for bail, but not disputed the aforesaid facts.

7. Considering the above facts and circumstances of the case and the stand of the prosecutrix in the court during trial, the applicant is entitled to be released on bail.

8. Let applicant **Aman** 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.

Order Date :- 4.7.2023

Rao/-