

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7873 of 2023

Applicant :- Vivek Kumar

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

Counsel for Applicant :- Akhand Pratap Singh, Apoorv Singh, Manoj Kumar, Prabhat Kumar Mishra, Rahul Kumar Shukla

Counsel for Opposite Party :- G.A., Samta Rao, Siddharth Rao Anand, Surya Bali

Hon'ble Brij Raj Singh, J.

1. Heard Sri Prabhat Kumar Mishra learned counsel for the applicant, Sri Siddharth Rao Anand, learned counsel for the complainant and Sri Rajnish Kumar Verma, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Complaint Case No. 5772 of 2020 under sections 323, 376, 504, 506 IPC Police Station Kotwali Nagar, District Barabanki.

3. It has been submitted by learned counsel for the applicant that prosecutrix moved an application under section 156(3) Cr.P.C. on 20.02.2020, making allegation that on the pretext of marriage, the applicant had established physical relation against her and she has stated in the complaint that the applicant is Dewar and when she came to know that he was going to marry then she lodged the present complaint.

4. Learned counsel for the applicant has invited attention of this Court towards the partition suit which is filed by the prosecutrix on 15.12.2018 (Annexure no.5 to the bail application) in which the applicant is a party and she has mentioned in the suit that her husband died on 21.06.2018.

5. It has been submitted by learned counsel for the applicant that prosecutrix was also not medically examined. He has submitted that it is a case of false implication out of vengeance. 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 16.05.2023.

6. Learned counsel for the complainant has opposed the prayer for bail and has submitted that the prosecutrix has levelled the allegation of rape against the applicant in her statement recorded under section 200 Cr.P.C. as well as in the complaint, therefore, the applicant is not entitled to be released on bail. Learned A.G.A. has opposed the prayer for bail.

7. 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 due to enmity between the parties of civil suit for partition due to aforesaid reason the applicant has been falsely implicated in the present case and the argument that there is no medical examination of the prosecutrix, therefore, I am of the opinion that the applicant is entitled to be released on bail.

8. Let the applicant, namely, **Vivek Kumar**, 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 :- 21.12.2023

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