

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8429 of 2023

Applicant :- Arvind Alias Sintoo Pasi

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Vishnu Dev Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard Shri Vishnu Dev Shukla, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA for the State and perused the record. Though notice has been served sufficiently on opposite party no. 2 but none has appeared.
3. This is the second bail application. The first bail application was rejected by coordinate bench of this Court on 04.08.2021. Thereafter, PW2 the prosecutrix has been examined therefore, new cause of action has arisen and applicant has filed this bail application.
4. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.468 of 2020, under Sections 363, 366, 376-D IPC., and Section 3/4 POCSO Act, Police Station- Inayat Nagar, District Faizabad.
5. It is contended by learned counsel for the applicant that the prosecutrix PW2 has been examined before the trial Court and in her cross examination, she has specifically deposed that she had not gone to Allahabad along with the applicant and he did not commit rape against her. She further deposed that case was lodged by father for which she has no knowledge and she does not know as to what was told by her to the Magistrate. Learned counsel submitted that once the victim has not supported the prosecution case, at this moment, it cannot be inferred that applicant is involved in the commission of crime.
6. Learned counsel submitted that co-accused Ramesh Kumar and Bhawani Pher have been granted bail by this Court on 27.04.2023 and 28.03.2023 in Criminal Misc. Bail Application Nos.14041 of 2022 and 13477 of 2022. The case is squarely covered with parity with co-accused. The applicant has no criminal history. The applicant is languishing in jail since 24.07.2020.
7. Learned AGA as well as learned counsel for the complainant vehemently opposed the prayer for bail but could not dispute the aforesaid submission made by learned counsel for the applicant that the other co-accused

have been granted bail.

8. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the fact that the co-accused Ramesh Kumar and Bhawani Pher had already been granted bail by this Court; argument that prosecutrix has not supported the prosecution case, therefore, I am of the opinion that the applicant is entitled to be released on bail on the ground of parity.

9. Let the applicant, **Arvind @ Sintoo Pasi**, 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.

10. 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 :- 5.12.2023/Pks