

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8881 of 2023

Applicant :- Junaid Khan

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.,Paritosh Shukla,Sukh Deo Singh,Surendra Kumar

Hon'ble Brij Raj Singh,J.

1. Supplementary affidavit filed on behalf of the applicant, is taken on record.
2. Heard Sri Ramakar Shukla, learned counsel for the applicant, Sri Surendra Kumar, learned counsel for the complainant and Sri G.D. Bhutt, learned A.G.A.-I for the State.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.36 of 2023, under sections 363, 366, 323, 504, 506, 376D, 344 IPC and Section 5/6 Protection of Children from Sexual Offences Act, 2012, Police Station Motigarapur, District Sultanpur.
4. It has been submitted by learned counsel for the applicant that as per FIR, incident is alleged to take place on 06.05.2022 and victim herself had given registered information to the police for the first time on 22.12.2022 and the victim moved application under section 156 (3) Cr.P.C. on 23.12.2023 and the FIR was lodged on 08.02.2023. It has been submitted by learned counsel for the applicant that the neither the family members of the prosecutrix nor the prosecutrix herself lodged FIR promptly from the date of incident rather the application was moved on 23.12.2022 i.e. about seven months . It has been submitted by learned counsel for hte applicant that the proseuctrix has stated in her statement recorded under section 164 Cr.P.C. that she had gone on call of natures where three persons abducted her and she was made unconscious by them. She further deposed before this court that she was raped by the applicant and she remained in a room for seven months. She also deposed

before the court that she was pregnant of three months. Learned counsel for the applicant has submitted that medical report is not supporting the prosecution case and no injuries were found on the person of the prosecutrix rather her age has been determined and as per ossification test she is aged about 17 years. He has further submitted that after looking into the version of FIR as well as statement of the prosecutrix recorded under section 164 Cr.P.C. it appears that the prosecutrix was kept in a room for seven months. This cannot be believed that neither the family member nor she lodged any report for long time and it is not possible that a girl would be abducted and thereafter she would be kept in a room for seven months and she did not raise any alarm. It is submitted by learned counsel for the applicant that it is a case of consent and the benefit of two years upper limit may be extended and it can be inferred that the prosecutrix was major at the relevant time. 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 21.03.2023.

5. On the other hand, Sri Surendra Kumar, learned counsel for the complainant has submitted that the girl is 17 years and she was minor and was kept in a room for seven months and rape was committed by the applicant as such he is not entitled for bail. In support of the arguments he has relied upon the judgment of this Court in the case of **Monu and others Vs. State of U.P.** reported in 2011 CrLJ 4496 as well as the judgement of High Court of Himanchal Pradesh in the case of **Rajesh Saini Vs. State of Himanchal Pradesh** reported in 2008 CrLJ 3712 and has submitted that the bail application of the applicant may be rejected.

6. Learned A.G.A. though opposed the prayer for bail but could not dispute the aforesaid facts.

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 family members did not lodge any report though the incident took place on 06.05.2022 and the prosecutrix moved an application under section 156(3) Cr.P.C. after seven month for lodging of report and the argument that it is a case of consent and medical report is not supporting the

prosecution case, therefore, I am of the opinion that the applicant is entitled to be released on bail.

8. Let the applicant, namely, **Junaid Khan**, 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 :- 23.11.2023

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