

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9113 of 2023

Applicant :- Kaushal @ Samarjeet Verma

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

Counsel for Applicant :- Dharmendra Kumar Trivedi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Notice has been served on respondent no. 2. This fact has been brought by learned AGA in his instructions, necessary endorsement of service of notice on respondent no. 2 has been handed over to this court, the same is taken on record.

2. Heard Shri Dharmendra Kumar Trivedi, learned counsel for the applicant, Shri Diwakar Singh, learned AGA-I for the State and perused the record.

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.422 of 2020, under Sections -376, 342, 506 IPC., and Section 5/6 POCSO Act, Police Station- Unchahar, District Raebareli.

4. It is contended by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. The applicant is not named in the FIR. However, his name has surfaced in the statement of prosecutrix recorded under Section 164 Cr.P.C. Learned counsel submitted that co-accused Sharad Kumar, has been granted bail in Criminal Misc. Bail Application No.11025 of 2023 on 27.1.2023 in which a detail order has been passed. He contended that the case of the applicant is at better footing than the co-accused Sharad Kumar because applicant is not named in the FIR whereas co-accused has been named in the FIR. He further contended that the statement of prosecutrix under section 164 Cr.P.C. indicates that same allegation levelled against the applicant was also levelled against co-accused Sharad Kumar, who has already been enlarged on bail as such applicant is also entitled to be released on bail. The applicant has no criminal history. The applicant is languishing in jail since 21.03.2023.

5. Learned AGA vehemently opposed the prayer for bail but could not dispute the aforesaid submission made by learned counsel for the applicant that the case of the applicant is on better footing than that of co-accused.

6. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and

looking to the argument that the co-accused Sharad Kumar had already granted bail by this Court and the case of the applicant is on better footing than that of co-accused, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, **Kaushal @ Samarjeet Verma**, 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 :- 2.11.2023

Pks