

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9959 of 2022

Applicant :- Kishan Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Ramesh Chandra, Kashi Ram, Prem Chandra Chauhan

Counsel for Opposite Party :- G.A., Adarsh Kumar Maurya, Rajendra Prasad Sharma, Rakesh Kumar Maurya

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Sunil Kumar Ojha holding brief of Sri Adarsh Kumar Maurya, learned counsel for the complainant, Sri Vishwas Sarasvat, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case No.682 of 2021 case crime No.496 of 2021 under Section 392, 376, 342, 366, 323, 506 IPC, PS Para, district Lucknow.

3. Learned counsel for the applicant has submitted that FIR has been lodged by the prosecutrix herself in which she has stated that she had lodged FIR on 3.10.2021 in case crime No.413 of 2021 under Section 406/504/506 IPC PS Malihabad district Lucknow against the applicant for committing theft against her. She has further mentioned in the present FIR that the applicant and his brother were creating pressure on her to enter into the compromise in the said case the prosecutrix was going to Buddheshwar temple where the applicant met along with his brother and abducted her and he committed rape in his house. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the case due to enmity which is already admitted in the FIR itself lodged by the prosecutrix and out of retaliation, the present FIR has been lodged by her for the reason that the applicant wanted that compromise should be entered into between him and the prosecutrix.

4. Learned counsel for the applicant has further submitted that the victim refused for conducting medical examination and she is 27 years married lady. He has further submitted that the refusal of medical examination itself goes to indicate that a false and fabricated case has been lodged against the applicant. It has been further submitted that the applicant and the prosecutrix were accused together in a separate case crime No.269 of 2021 lodged on 30.6.2021 lodged by Sheenu Maurya. This fact also goes to indicate that they know each other and some personal dispute is there between them. Learned counsel for the applicant has further submitted that the statement under Section 164 CrPC of the prosecutrix is quite contradictory to the version of FIR. Learned counsel for the applicant has explained criminal history in supplementary affidavit dated 22.8.2023 and has submitted that he is granted bail in the cases mentioned. He has submitted that the applicant is in Jail since 21.10.2021 i.e., near about two years in Jail is

going to be passed. He has further submitted that trial of the case is not likely to be concluded in near future.

5. Learned counsel for the complainant has opposed the bail and submitted that in the statement under Section 164 CrPC the prosecutrix has levelled allegation of rape which is also corroborated with the version of FIR. He has further submitted that the applicant has criminal history, therefore, bail is liable to be rejected.

6. Learned A.G.A. has also opposed the bail and has submitted that FIR as well as statement under Section 164 CrPC indicate that the allegation of rape is levelled by the prosecutrix, therefore, the bail is liable to be rejected.

7. Considering over all facts and circumstances of the case, the argument that the prosecutrix had refused medical examination and she is married lady of 27 years of age, the argument that it is false implication for the reason that it is apparent that the prosecutrix in the FIR has stated that earlier, she had lodged a report in case crime No.413 of 2021 under Section 406/504/506 IPC at PS Malihabad, district Lucknow against the applicant and enmity is established, the argument that the applicant is in Jail for a period near about two years, it is a fit case for bail.

8. Let the applicant, Kishan Yadav 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.

9. 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.

10. Trial Court is directed to conclude the trial of the case within six months and no unnecessary adjournment will be granted to the learned counsel for the applicant.

Order Date :- 13.10.2023

Rajneesh JR-PS)