

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9321 of 2023

Applicant :- Narendra Yadav

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

Counsel for Applicant :- Anurag Misra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Vishvas Sarasvat, learned A.G.A. for the State and perused record.
2. Notice has been served on the O.P. No.2 but none is present.
3. This is second bail application. The first bail application Crl. Misc. Bail Application No.1 of 2022 was rejected by Hon'ble Mr. Justice Dinesh Kumar Singh, J. on 11.11.2022.
4. This second bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.068 of 2021 S.T. No.562 of 2021 under Section 363, 366, 376 IPC, 3/4 POCSO Act and 3 (2) V of S.C./S.T. Act, PS Sandana, district Sitapur.
5. Learned counsel for the applicant has submitted that prosecutrix has been examined by the Trial Court as PW-2 and in her cross examination, the prosecutrix has deposed before the Court that she was scolded by her mother that is why, she left her house and had gone to her maternal uncle's house. She has further deposed that the applicant did not entice her and out of her own will she had gone to house of her maternal uncle. She has further deposed that her father has lodged report against the applicant but he is not known to her. She has further deposed that no incident took place with her and, therefore, she was medically not examined. She deposed that the applicant did not entice her and did not commit rape. She has further denied the statement under Section 164 CrPC as she deposed before the Court that she has no idea as to when the statement was recorded. Learned counsel for the applicant has submitted that the brother PW-3 has also not supported the prosecution case in cross-examination. He deposed before the Court that he and her sister had gone to the house of the maternal uncle and the applicant did not do anything wrong against his sister.
6. Learned counsel for the applicant has further submitted that after looking to the statement of PW-2 prosecutrix and the PW-3 brother of the prosecutrix, at the moment it cannot be inferred that the applicant was involved in commission of crime. He has further submitted that trial of the case would not conclude in near future. He has further submitted that the applicant has no criminal history and he is in Jail since 18.3.2021.

7. Learned A.G.A. though opposed the prayer for bail but could not dispute the fact that PW-2 prosecutrix and PW-3 brother of the prosecutrix have not supported the prosecution case in cross-examination and the trial would not conclude in near future.

8. Considering over all facts and circumstances of the case, the argument that PW-2 prosecutrix and PW-3 brother of the prosecutrix have not supported the prosecution case in cross-examination, it is a fit case for bail.

9. Let the applicant, Narendra 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.

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 :- 12.10.2023
Rajneesh JR-PS)