

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10499 of 2022

Applicant :- Arun Kumar

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

Counsel for Applicant :- Jagdeshwar Prasad Yadav,Ajeet Kumar Singh,Surendra Yadav

Counsel for Opposite Party :- G.A.,Seema Kashyap,Smriti

Hon'ble Brij Raj Singh,J.

1. Rejoinder affidavit filed by learned counsel for applicant is taken on record.

2. Heard Shri Jagdeshwar Prasad Yadav, learned counsel for the accused-applicant, Ms. Smriti, learned counsel for complainant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been filed seeking release of the accused/applicant **Arun Kumar** on bail, who is involved in Case Crime No. 731 of 2021 under Sections 376(3), 506 I.P.C & Section 3/4(2) Protection of Children From Sexual Offences Act, 2012, Police Station- Pihani, District- Hardoi.

4. Learned counsel for the applicant submitted that the mother of prosecutrix had earlier filed an application under Section 156(3) Cr.P.C on 13.09.2021, which is filed along with the supplementary affidavit dated 29.11.2022, wherein she has levelled allegation that the accused-applicant, his father and three brothers committed rape on her on 01.09.2021. During pendency of the said application, she filed another application under Section 156(3) Cr.P.C on 21.10.2021 wherein she has levelled allegation of rape only against the applicant and has further alleged that her minor daughter was raped by the applicant on 10.08.2021. In pursuance of the direction issued by the court, First Information Report was lodged on 16.12.2021. Learned counsel for applicant further submitted that earlier application filed by the mother of the prosecutrix was rejected on 17.11.2022. He further submitted that the prosecutrix was medically examined and as per medical report, there is no sexual assault done with the prosecutrix, however, her hymen is not present. It is argued that the prosecutrix was 14 years of age, and in such age, it is natural that hymen may not be present. Learned counsel for the applicant further stated that there is no previous criminal history of the applicant and he is languishing in jail since 20.05.2022. He has further

submitted that due to election of village and village *partibandi*, the applicant has been falsely implicated in the present case.

5. On the other hand, Ms. Smriti, learned counsel for complainant (opposite party no.2) has submitted that as per the statement of prosecutrix under Section 164 Cr.P.C, she has levelled allegation of rape against the applicant, who had entered into her house and committed rape on her and she has been consistent with her statement before the trial Court that she was raped by the applicant and as per medical report, she was 14 years of age.

6. Learned A.G.A for the State has adopted the arguments advanced by learned counsel for complainant and has opposed the bail of the applicant.

7. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, after hearing both parties, following factual aspects are to be considered to decide the case:-

(i) The fact that the mother had earlier instituted an application under Section 156(3) Cr.P.C on 13.09.2021, wherein she has levelled allegation that she was raped by the applicant, his father father and three brothers on 01.09.2021, but during pendency of the said case, she filed another application on 21.10.2021 alleging therein that the applicant committed rape upon her minor daughter on 10.08.2021 and it is quite strange to believe as to why she could not move application against the applicant immediately and why she moved the application on 21.10.2021 and that too levelling allegation of rape against the applicant.

(ii) The other argument is also relevant that the medical report is not supporting the prosecution case, there is no sign of physical assault on prosecutrix.

Considering the aforesaid arguments, I find it to be a fit case for grant of bail.

8. Accordingly, the bail application is **allowed**.

9. Let the applicant **Arun Kumar** 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 her 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 :- 21.12.2023

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