

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10429 of 2023

Applicant :- Bashir Khan Alias Munna

Opposite Party :- State Of U.P. Thru. Addl . Chief Secy. Home Lko. And 3 Others

Counsel for Applicant :- Ram Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Shri Chandeshwar Kumar Singh, Advocate has also signed Vakalatnama along with Shri Ram Kumar Yadav, on behalf of applicant, which is on record.
2. This is the third bail application. The second bail application was rejected on 20.10.2022 with a direction that the trial would be concluded within four months. Now, all the fact witnesses have been examined and new cause of action has arisen therefore, the bail application has been filed.
3. Heard Shri Chandeshwar Kumar Singh, learned counsel for the applicant, Shri Ramesh Kumar, learned AGA for the State and perused the record. No one has appeared on behalf of complainant though notice has been issued.
4. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.345 of 2020, under Sections-376D, 507, 328 I.P.C., Section 3/4 POCSO Act, Section 67 of I.T. Act P.S.- Indira Nagar, District Lucknow.
5. Learned counsel for the applicant has submitted that PW1 complainant has been declared hostile by the trial court. Thereafter the statement of PW2 prosecutrix has also been recorded before the trial court and she denied the entire version of the prosecution case and has also been declared hostile. The prosecutrix had further deposed before the Court that the police got signature of her mother on blank paper and same was used by the police in lodging the report. She further deposed that rape was not committed against her by the applicant and has denied the statement given under section 164 Cr.P.C.
6. Similarly, PW3 friend of prosecutrix Ankita Singh has also been declared hostile. Learned counsel for the applicant submitted that at the moment it cannot be presumed that the applicant is involved in commission of crime. Learned counsel further submitted that the main witnesses having become hostile, the applicant is entitled to be enlarged on bail. Learned counsel submitted that

applicant has no criminal history, which has been stated in para 4 of the supplementary affidavit filed with bail application. The applicant is in jail since 26.09.2020.

7. Learned AGA opposed the prayer for bail but could not dispute the aforesaid contention stated by the learned counsel for the applicant that PW1, PW2 and PW3 have been declared hostile.

8. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering the fact that both PW1 complainant, PW2 prosecutrix and her friend PW3 have become hostile, I am of the opinion that the applicant is entitled to be released on bail.

9. Let the applicant, **Bashir Khan @ Munna** 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 :- 19.12.2023

Pks