

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10377 of 2023

Applicant :- Nabi Ahmad Alias Matari

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Lko

Counsel for Applicant :- Anshuman Singh

Counsel for Opposite Party :- G.A., Dildar Khan, Vihswajeet Singh Yadav

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Ramendra Kumar Advocate who has filed his power on behalf of the complainant, Sri Rajesh Kumar Singh, learned A.G.A.-I for the State and perused record.

Power of Sri Ramendra Kumar Advocate filed on behalf of complainant is taken on record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.531 of 2022 under Section 376, 342, 506 IPC, PS Laharpur, district Sitapur.

3. Learned counsel for the applicant has submitted that the prosecutrix has levelled allegation of rape against the applicant in FIR as well as in the statement under Section 164 CrPC. However, it has been submitted in para-7 of the bail application that there was conversation between the applicant and the prosecutrix for 92 times with effect from 29.7.2022 to 20.8.2022 and duration was more than half an hour. It has been submitted that said fact is not denied by the learned AGA in para-10 in counter affidavit rather, it is submitted in para-10 of the counter affidavit that 92 times there was call between the applicant and the prosecutrix. It has been further submitted that it is a case of consent and later on, the prosecutrix lodged FIR as well as statement under Section 164 CrPC was recorded just to settle her personal score. Learned counsel for the applicant has further submitted that medical report does not support the prosecution case and as per Radiological Report, the prosecutrix is between 35-38 years of age and she is major. It has been further submitted that the criminal history of one case is explained in para-17 of the bail application and except this case the applicant has no other criminal history. He has further submitted that the

applicant is in jail since 12.7.2023.

4. On the other hand, Sri Ramendra Kumar learned counsel for the complainant has opposed the bail and has stated that statement under Section 164 CrPC goes to indicate that the applicant called the prosecutrix in his house and she was overpowered by him and thereafter, rape was committed by him and the act was supported by the wife of the applicant. He has further submitted that single testimony of prosecutrix is sufficient to decline the bail and the application for bail is liable to be rejected.

5. Similarly, Sri Rajesh Kumar Singh, learned A.G.A.-I has opposed the bail and has submitted that statement of prosecutrix under Section 164 CrPC indicates that rape has been committed, therefore, bail should be rejected.

6. Considering over all facts and circumstances of the case, the argument that it is a case of consent supported with call details of 92 times for duration of more than half an hour, the argument that medical report does not support prosecution case, the argument that prosecutrix is aged about 35-38 years as per Radiological Report, it is a fit case for bail.

7. Let the applicant, Nabi Ahmad @ Matari 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.

9. The Trial Court is directed to conclude the trial within six months. No unnecessary adjournment will be granted. It is made clear that in case adjournment is taken by the accused or any threat is given to the prosecutrix or her family members, the same will be the subject for cancellation of bail.

Order Date :- 17.10.2023
Rajneesh JR-PS)