

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10671 of 2023

Applicant :- Pappu Alias Rakesh

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

Counsel for Applicant :- Neeraj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Notice has been served upon opposite party no.2 but none has appears on behalf of opposite party no.2 to press the present bail application.

2. Heard learned counsel for the applicant and Sri Diwakar Singh, learned A.G.A. for the State.

3. The present second bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.565 of 2022 under sections 376D, 506 IPC and Section 5/6 of POCSO Act, Police Station Kotwali District Unnao.

4. Learned counsel for the applicant has submitted that this is second bail application. The first bail application of the applicant bearing Criminal Misc. Bail Application No.13364 of 2022 has been rejected by this Court on 19.11.2022 and the statement of fact witnesses were not recorded at the time of rejection of first bail application. The statement of the prosecutrix (P.W.-1) and the statement of Suman (P.W.-2) has been recorded before the trial court after rejection of first bail application, thus, the second cause of action arises as such present second bail application has been filed before this Court.

5. It has been submitted by learned counsel for the applicant that though in the examination-in-chief the prosecution has supported the prosecution case but in her cross- examination she denied the entire version of the prosecution case and she deposed before the court that she is illiterate lady and she had gone to the house of Suman and she was abducted by some miscreants but she could not identify anyone of the miscreants. She further deposed that she did not mention the name of the

applicant before the police regarding rape. She deposed that on blank paper her signature was obtained. She also deposed before the court that the statement under section 161 Cr.P.C. was not read before her by the police and whatever statement under section 164 Cr.P.C. she had given before the Magistrate, the same was given at the behest of police. Learned counsel for the applicant has submitted that the prosecutrix has not supported the prosecution case. The statement of Suman (P.W.-2) has also been recorded before the trial court and as per the FIR, the incident took place in the house of Suman (P.W.-2) but Suman has stated that no such incident took place in her house. She stated that the prosecutrix had come to her house and told that she had been beaten by her father that is why she came to her house. Learned counsel for the applicant has submitted that after looking into the statement of Prosecutrix (P.W.-1) and Suman (P.W.-2) at the moment it cannot be inferred that the applicant is involved in the commission of crime and he has been falsely implicated in the present case. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 18.07.2022.

6. On the other hand, learned A.G.A. has opposed the prayer for bail but could not dispute the fact that in the cross-examination prosecutrix (P.W.-1) has not supported the prosecution case. Similarly, Suman (P.W.-2) has also not supported the prosecution case.

7. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that in the cross-examination the prosecutrix (P.W.-1) has not supported the prosecution case and Suman (P.W.-2) has also not supported the prosecution case, therefore, I am of the opinion that the applicant is entitled to be released on bail on the ground of parity.

8. Let the applicant, namely, **Pappu Alias Rakesh**, 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.

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 :- 19.10.2023

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