

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10769 of 2023

Applicant :- Mohini

Opposite Party :- State Of U.P. Thru. Secy. Home, Civil Sectt. Lko. And 3 Others

Counsel for Applicant :- Nagendra Singh, Kuldeep

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Notice has been served upon respondent no.2 but non has appeared on behalf of the respondent no.2 to press the bail application.

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

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.0176 of 2023 under sections 376, 342, 352, 506, 120B IPC and 16/17 POCSO Act, Police Station Loni Katra District Barabanki.

4. It has been submitted by learned counsel for the applicant that the applicant lodged FIR against the brother of the prosecutrix on 26.06.2023 under sections 323, 504 and 506 IPC which has been annexed as Annexure no.2 to the affidavit filed in support of the bail application. Learned counsel for the applicant has submitted that brother of the prosecutrix has beaten the applicant that is why FIR was lodged. It has also been submitted by learned counsel for the applicant that out of retaliation of the aforesaid case, present FIR has been lodged on 29.06.2023 by the prosecutrix in which the allegation for providing assistance to the co-accused Musheer has been levelled against the applicant. Learned counsel for the applicant has submitted that the applicant has been falsely implicated out of retaliation. He also submitted that personal enmity is going on which is apparent on the face of annexure no.2. He has submitted that case of the applicant is distinguishable with the case of co-accused Musheer. Learned counsel for the applicant has submitted that the applicant is lady as such the benefit of section 437 Cr.P.C. may be extended to her. 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, she shall not misuse the liberty of bail. The applicant is in jail since 06.07.2023.

5. Learned A.G.A. has opposed the prayer for bail but could not dispute the fact that applicant has earlier lodged FIR against the brother of the prosecutrix.

6. 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 out of retaliation the present FIR has been lodged against the applicant, the argument that the applicant is a lady and she may be extended the benefit of Section 437 Cr.P.C., therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Mohini**, be released on bail in the above case crime number on her 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 she 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 her 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 her, 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 her 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 :- 12.10.2023

dk/