

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10871 of 2023

Applicant :- Manish @ Sanjay Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko

Counsel for Applicant :- Prasoon Srivastava, Arpan Prakash Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Counter affidavit filed by learned AGA is taken on record.
2. Heard Shri Prasoon Srivastava, learned counsel for the applicant, Shri Mohd. Asif Khan, learned AGA for the State and perused the record.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.169 of 2023, under Sections 452, 376, 506 I.P.C., Police Station Loni Katra, District Barabanki.
4. Learned counsel for the applicant submitted that earlier the prosecutrix lodged FIR against the applicant on 08.09.2022 under Sections 354, 452, 504, 506 IPC., making allegation of molestation. Learned counsel submitted that the applicant had filed an application under Section 156 (3) Cr.P.C. against the prosecutrix in which he has levelled allegation against the prosecutrix that Rs.75,000/- loan was given by him to the prosecutrix but she has refused to pay and in order to save herself she had lodged criminal case against the applicant. The said application filed under Section 156(3) Cr.P.C. of the applicant had been treated as complaint and the prosecutrix has been summoned under Sections 406, 323, 506 IPC on 04.04.2023 and he has annexed the order as Annexure 3. Learned counsel submitted that out of retaliation of the aforesaid case between the parties, she had lodged the present case making allegation of rape.
5. Learned counsel has invited attention of this Court towards the statement recorded under Section 164 Cr.P.C. as well as version of FIR, which indicate that she has mentioned that on 25.06.2023 at about 4:30 in the evening when she was sleeping in her house, the applicant over-powered her and committed rape. Learned counsel has further invited attention towards the Case Diary No. 9 in which it is mentioned that no fresh injury was seen and medical examination was conducted on 25.06.2023 in the morning. Learned counsel submitted that the said fact indicates that there is contradiction of timing and FIR is ante time. Learned counsel submitted that applicant has been falsely implicated just to settle the personal score of

prosecutrix other wise, the applicant has not committed any offence. Learned counsel submitted that the criminal history of the applicant has been explained satisfactorily in supplementary affidavit. The applicant is in jail since 28.06.2023.

6. On the other hand, learned AGA has opposed the prayer for bail and submitted that the statement under Section 164 Cr.P. C of the prosecutrix indicates that it is a case of rape and applicant has committed offence as such he is not entitled to be released on bail.

7. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the argument that litigation is pending between the parties prior to the present case ; argument that due to retaliation, present FIR has been lodged; argument that after looking into the medical report in CD 9 FIR appears to be ante time ; argument that earlier also, prosecutrix had lodged FIR against the applicant on 08.09.2022 under Sections 354, 452, 504, 506 IPC and the applicant had also instituted criminal case against in which the prosecutrix was summoned prior to the present case, therefore, this Court finds it to be a fit case for bail.

8. Let the applicant, **Manish @ Sanjay 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 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.

9. 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 :- 9.11.2023

Pks