

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11025 of 2023

Applicant :- Sharad Kumar

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

Counsel for Applicant :- Jai Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Jai Pratap Singh, learned counsel for the accused-applicant as well as Ms. Priyanka Pandey, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Sharad Kumar** on bail, who is involved in Case Crime No. 422 of 2020 under Sections 376, 342, 506 I.P.C. and 5/6 POCSO Act, Police Station Unchahar, District Raebareli.

3. Learned counsel for the applicant submitted that the alleged incident took place on 26.12.2019 and the father of the prosecutrix moved an application under Section 156 (3) Cr.P.C for lodging the F.I.R on 29.01.2020 and on the direction of court, the First Information Report was lodged on 11.08.2020. The case was investigated by Police and chargesheet was filed only against co-accused Anoop and names of other two accused persons namely Ranjeet and Kaushal along with the applicant were removed and the final report was filed on 23.10.2020. Learned counsel for applicant further submitted that the statements of independent witnesses namely Guru Prasad and Radheshyam were taken into consideration, and they have specifically mentioned in their statements that there was relation between the co-accused Anoop and the prosecutrix. They further stated that the applicant and other two co-accused have been falsely implicated in the present case. Learned counsel for applicant further submitted that after considering the entire evidence, the police submitted charge-sheet only against co-accused Anoop and final report was filed in favour of the applicant. He further stated that the statement of prosecutrix under Section 164 Cr.P.C was recorded on 11.08.2020, much belated from the date of incident i.e. 26.12.2019, wherein she has named the applicant also. Learned counsel for applicant submitted that the applicant is the friend of co-accused Anoop, that is why he has been falsely implicated in the present case. The medical examination of the prosecutrix was conducted on 03.08.2020 and no spermatozoa was found and no opinion of rape has been given by the doctor, which clearly goes to indicate that the

medical report of prosecutrix is also supporting the prosecution case.

4. Learned counsel for the applicant further stated that there is no plausible explanation to the fact that F.I.R has been lodged at a much belated stage. He further submitted that the case of the applicant is distinguishable from that of the co-accused Anoop. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 21.03.2023.

5. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that statement of prosecutrix recorded under Section 164 Cr.P.C goes to indicate that allegation of rape is levelled against the applicant, therefore, bail is liable to be rejected.

6. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that after considering the statement of independent witnesses, namely Guru Prasad and Radheshyam, the fact that final report was filed in favour of the applicant on 23.10.2020, the argument that medical report of prosecutrix is not supporting the prosecution case, the argument that statement of prosecutrix under Section 164 Cr.P.C, was recorded at a much belated stage, I find it to be a fit case for grant of bail.

7. Accordingly, the bail application is **allowed**.

8. Let the applicant **Sharad 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 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 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 :- 27.10.2023

DiVYa