

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12219 of 2022

Applicant :- Bhupendra Chandra Pandey

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

Counsel for Applicant :- Rakesh Pathak,Vijay Pathak

Counsel for Opposite Party :- G.A.,Ajeet Pratap Singh,Mohd Ashif Khan,Zia Ul Qayum

Hon'ble Brij Raj Singh,J.

1. Case called out. None is present on behalf of the complainant.
2. Heard Shri Vijay Pathak, learned counsel for the accused-applicant as well as Ms. Priyanka Pandey, learned A.G.A. for the State and perused the record.
3. This bail application has been filed seeking release of accused/applicant **Bhupendra Chandra Pandey** on bail, who is involved in Case Crime No. 116 of 2022, under Sections 376(3), 450, 506 I.P.C. & 5/6 POCSO Act, Police Station Deeh, District Raebareli.
4. Learned counsel for the applicant submitted before the Court that P.W.-2, the prosecutrix, in her cross-examination, has not supported the prosecution case and she has deposed before the Court that the applicant did not do anything wrong with her nor committed rape with her. She further deposed before the Court that she did not identify the accused who was standing in the witness box. He did not do any forceful act with her. She further stated in her cross-examination that she did not have any knowledge as how her mother lodged the First Information Report against the applicant. She further stated that she had not given any statement under Section 161 Cr.P.C before the Police and at the behest of her mother, the prosecutrix had given her statement under Section 164 Cr.P.C. It has been further submitted by learned counsel for applicant that the entire version of prosecution case has been denied by the prosecutrix, in her cross-examination. Similarly, P.W.-1, the mother of prosecutrix has also not supported the prosecution case. In her cross-examination she has deposed before the Court that on the date of incident, she was not present in her house as she had gone to her parents house prior to 3-4 days and when she returned to her house nothing was told by her children. She further deposed that her children did not tell anything adverse against the applicant and other co-accused.
5. It is further submitted by the learned counsel for the

applicant that once the fact witnesses have been examined and they have not supported the case, presumption goes in favour of the applicant and at the present moment, it cannot be inferred that the applicant has committed any crime as the entire version of the F.I.R has been denied by the P.W.-2. He further stated that there is no criminal history against the applicant and he is in jail since 18.08.2022.

6. Learned A.G.A. has, however, opposed the prayer for grant of bail but she could not dispute that P.W.-2 has become hostile and P.W.-1 has not supported the prosecution case.

7. Considering the facts and circumstances of the case, perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that P.W.-2, the prosecutrix, in her cross-examination, has denied the entire version of F.I.R and has not supported the prosecution case and P.W.-1, the mother of prosecutrix has not supported the prosecution case, I find it to be a fit case for grant of bail.

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

9. Let the accused/applicant **Bhupendra Chandra Pandey** involved in above-mentioned case be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned subject to 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.

10. 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 :- 7.12.2023
DiVYa/Rajneesh