

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11243 of 2023

**Applicant :-** Ritesh

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

**Counsel for Applicant :-** Anil Kumar Yadav,Rajesh Kumar Shukla

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh,J.**

1. Heard Shri Anill Kumar Yadav, learned counsel for the applicant, Shri Akhilesh Kumar Srivastava, learned AGA for the State and perused the record. Notice upon opposite party no.2 has been served sufficiently, but no one has appeared.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.0040 of 2023, under Sections 376D, 506 I.P.C., and 5(g)/6 POCSO Act, Police Station Nawabganj, District Pratapgarh.

3. It is contended by learned counsel for the applicant that mother of the prosecutrix lodged FIR in which she has levelled allegation that her daughter was over powered by applicant and other two accused persons and there is allegation of outraging the modesty. The FIR was lodged under Sections 354 Ka, 354Kha, 506 IPC and 7/8 POCSO Act. Learned counsel contended that there was no allegation of fingering in the FIR however, the statement of prosecutrix was recorded under Section 164 Cr.P.C. in which she has levelled allegation of fingering against the applicant but she has refused for internal medical examination. Learned counsel contended that the prosecutrix and the applicant's family members belong to the same village and enmity is going on between them that is why applicant has been implicated in the present case. The applicant has no criminal history. The applicant is in jail since 14.03.2023.

4. Learned AGA opposed the prayer for bail and submitted that statement under section 164 Cr.P.C. of prosecutrix, aged about 15 years, indicates that allegation of fingering has been levelled against the applicant therefore, bail is liable to be rejected.

5. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the argument that there is no allegation of rape in the FIR ; argument that prosecutrix has improved her version in statement under section 164 Cr.P.C.; argument

that internal medical examination has been refused by the prosecutrix therefore, I am of the opinion that the applicant is entitled to be released on bail.

6. Let the applicant, **Ritesh** 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.

7. 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 :- 11.12.2023**

Pks