

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11211 of 2023

Applicant :- Vinay Kumar

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

Counsel for Applicant :- Dinesh Kumar, Govind Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Dinesh Kumar, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA-I for the State and perused the record. Nobody has appeared for the complainant though the notice has been served sufficiently.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.149 of 2021, under Sections 354A, 341, 504, 506, 376 (3) I.P.C., and Section 3/4 (2) POCSO Act, 2012 Police Station Jaitpur, District Ambedkar Nagar.

3. This is the second bail application. The first bail application was rejected on 20.10.2022 after considering the statement of PW1 and PW2 with further direction to conclude the trial within four months. However, after rejection of first bail application, new cause of action has arisen and that is why the applicant is pressing this bail application.

4. Learned counsel for the applicant submitted that after rejection of first bail application, PW3 Shrinath, Uncle of the prosecutrix has been examined before the trial court and he has not supported the prosecution case and has totally denied the prosecution case. Similarly, PW4 Radhey Shyam, PW5 Shiv Shankar and PW6 Prema Devi who were neighbours of the prosecutrix have been declared hostile. PW2 victim has also been declared hostile and PW1 mother also did not support the prosecution case.

5. Learned counsel for the applicant submitted that a direction was issued by this Court to conclude the trial within 4 months on 20.10.2022 and more than a year has passed but trial has still not been concluded and all other four witnesses, who were examined as PW3 to PW6 after rejection of first bail application, have not supported the prosecution case and they have turned hostile and it is not possible that trial will be concluded in near future. He submitted that once the victim has been declared hostile, at this moment, it cannot be inferred that applicant is

involved in the commission of crime. The applicant has no criminal history. The applicant is in jail since 07.10.2021.

6. Learned AGA opposed the prayer for bail but could not dispute the fact that the prosecutrix PW2 and other fact witnesses PW3 to PW6 have turned hostile before the trial court.

7. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and considering the argument that trial has not been concluded within the stipulated period; argument that PW2 the prosecutrix herself and other fact witnesses PW1 mother, PW3 to PW6 have become hostile; argument that trial court did not conclude the trial within four months as per direction of this Court, I find it to be a fit case for bail.

8. Let the applicant, **Vinay 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 :- 7.11.2023

Pks