

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11305 of 2023

Applicant :- Puneet Kumar @ Sumit

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

Counsel for Applicant :- Ashish Kumar Singh, Arvind Kumar Yadav

Counsel for Opposite Party :- G.A., Sudhir Kumar Rai

Hon'ble Brij Raj Singh, J.

1. Notice has served on opposite party no. 2, but none has appeared before the Court.

2. Counter affidavit filed by learned A.G.A for the State is taken on record.

3. Heard Shri Ashish Kumar Singh, learned counsel for the accused-applicant as well as Shri Asif Khan, learned A.G.A. for the State and perused the record.

4. This bail application has been filed seeking release of the accused/applicant **Puneet Kumar @ Sumit** on bail, who is involved in Case Crime No. 089 of 2023 under Sections 376 I.P.C and Section 3/4 POCSO Act, Police Station Bara Sagwar, District Unnao.

5. Learned counsel for the applicant submitted that the uncle of the prosecutrix had earlier informed the police on 14.06.2023 regarding the incident of maarpeet and the applicant was challaned under Section 151, 107 and 116 Cr.P.C. Learned counsel for applicant submitted that the uncle of prosecutrix lodged the First Information Report on 16.06.2023 under Sections 354 B I.P.C and Section 7/8 POCSO Act showing the date of incident as 08.06.2023, wherein he has levelled allegation that while the prosecutrix (niece) was sleeping on the rooftop, the applicant came and overpowered his niece and molested her but no allegation of rape has been levelled in the F.I.R. Learned counsel for applicant further submitted that in statement of prosecutrix recorded under Section 164 Cr.P.C, she has improved her version and has deposed before the Court that on the date of incident while she was sleeping on the rooftop, the applicant came there, unclothed her and inserted finger in her private part, but she has not levelled allegation of rape against the applicant. He further submitted that the act of the applicant is not coming within the purview of rape as per the definition of rape under Section 375 A/B/C/D I.P.C. The applicant belongs to the same locality and there is enmity between the parties and to give serious criminal

colour, the said F.I.R has been lodged.

6. Learned counsel for the applicant further submitted that the prosecutrix has refused to undergo medical examination. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 19.07.2023.

7. Learned AGA has opposed the prayer of bail of the applicant and has submitted that the statement of prosecutrix recorded under Section 164 indicates that the act of applicant is coming under the purview of rape, therefore, bail is liable to be rejected.

8. 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 the prosecutrix has improved her version in the statement recorded under Section 164 Cr.P.C, the argument that the prosecutrix refused to undergo medical examination, the argument that the case is not coming within the purview of rape as defined under Section 375 I.P.C, I find it to be a fit case for grant of bail.

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

10. Let the applicant **Puneet Kumar @ Sumit** 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.

11. 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 :- 2.11.2023
DiVYa