

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11601 of 2023

Applicant :- Pramod

Opposite Party :- The State Of U.P. Thru. Prin. Secy. Deptt. Of Home
Civil Sectt. Lko

Counsel for Applicant :- Pawan Kumar Mishra

Counsel for Opposite Party :- G.A.,Amit Ranjan Mishra

Hon'ble Brij Raj Singh,J.

1. Heard Shri Pawan Kumar Mishra, learned counsel for the applicant, Shri Mukesh Singh, learned AGA for the State, Shri Amit Ranjan Mishra, learned counsel for the complainant and perused the record.
2. The present bail application has been filed by the applicant **Pramod** with a prayer to enlarge him on bail in Case Crime No.311 of 2023, under Sections 366, 342, 376, 406 I.P.C., Police Station Kotwali Nanpara, District Bahraich.
3. Learned counsel for the applicant submitted that the FIR has been lodged by the father of the prosecutrix mentioning therein that his daughter has been enticed away by the applicant, who belonged to his village. The prosecutrix was recovered at Bandra Station in Mumbai. Learned counsel submitted that the prosecutrix In her statement under Section 161 Cr.P.C. has deposed that applicant had taken her to Bahraich by bus, thereafter she was taken to kanpur by a bus, where he gave some adulterated drink and she became unconscious. Thereafter she did not know where she had gone. The statement further indicates that she was confined in a room and applicant committed rape against her. Learned counsel for the applicant has invited attention of this Court towards the statement under Section 164 Cr.P.C. in which the prosecutrix has changed her version and has deposed that she had gone to her bua's house and while returning back, the applicant met and ask her to drop to her house. She stayed in bus and was given adulterated substance in a tea and she became unconscious. Thereafter she was confined in a room and the applicant committed rape against her for two days.
4. Learned counsel submitted that it is a case of consent because the prosecutrix is aged about 18-20 years and is major and had gone along with applicant to Mumbai and physical relations was established out of her free will. Learned counsel submitted that the prosecutrix refused for medical examination, which goes to indicate that applicant has been falsely implicated. He has submitted that for such

long span of time up to Mumbai, she has not raised any alarm therefore, the story appears to be concocted. The applicant has no criminal antecedents to his credit and is languishing in jail since 01.08.2023.

5. On the other hand, learned AGA as well as learned counsel for the complainant have opposed the prayer for bail and submitted that the applicant has committed offence because the prosecutrix was confined in a room. He submitted that the single testimony of the prosecutrix is sufficient to convict the applicant as such he is not entitled to be released on bail.

6. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the changed version in the statement of the prosecutrix recorded under sections 161 Cr.P.C. and 164 Cr.P.C.; argument that prosecutrix did not raise any alarm from Bahriach to Mumbai and argument that the prosecutrix refused for medical examination, I am of the view that it is a fit case for grant of bail.

7. Let the applicant, **Pramod** 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.

8. 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

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