

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11604 of 2023

Applicant :- Ashraf

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

Counsel for Applicant :- Dinesh Kr. Chaudhary

Counsel for Opposite Party :- G.A.,Deepak Kumar,Iqbal Ahmad

Hon'ble Brij Raj Singh,J.

1. Heard Shri Dinesh Kumar Chaudhary, learned counsel for the applicant, Mukesh Singh, learned AGA for the State and perused the record. No one is present for the complainant when the case was called.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.188 of 2023, under Sections 376-D, 506 I.P.C., Police Station Kotwali Utraula, District Balrampur.

3. Learned counsel for the applicant submitted that the prosecutrix herself lodged FIR on 09.07.2023 whereas date of incident of rape as mentioned in the FIR is 05.03.2023. Learned counsel submitted that the prosecutrix had given application under Section 156 (3) Cr.P.C. for lodging of the FIR on 11.04.2023 i.e. after one year and one month from the date of incident. It is submitted that as per version of FIR, it appears that marriage of the prosecutrix was settled with co-accused Ali Ansar but it appears that same could not be solemnised and applicant being friend of co-accused has been falsely implicated in the present case. Learned counsel for the applicant has submitted that after long lapse of one year, the prosecutrix tried to lodge FIR by way of filing application under Section 156 (3) Cr.P.C, this fact itself indicates that relation was there between the prosecutrix and co-accused and applicant being friend of co-accused has been made scape goat. The prosecutrix has refused for medical examination which goes to show that she filed FIR against the applicant just to settle her personal grudge. It is further submitted that the Investigating Officer asked the prosecutrix about recording of obscene material but she stated that the obscene material has been deleted and no obscene material has been viral by applicant or co-accused. The applicant has no criminal history and is in jail since 20.07.2023.

4. On the other hand, learned AGA on the basis of instructions states that statement of prosecutrix under Section 164 Cr.P.C. indicates that applicant has committed offence as such he is not entitled to be released on bail.

5. Considering overall facts and circumstances of the case, after hearing learned counsel for the parties, looking to the argument that prosecutrix is major, she has refused for medical examination; argument that after lapse of one year and one month from the date of incident, the prosecutrix has lodged FIR by way of filing application under Section 156(3) Cr.P.C. I find it to be a fit case for grant of bail.

6. Let the applicant, **Ashraf** 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 :- 2.11.2023

Pks