

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12074 of 2023

Applicant :- Sanjesh Kumar

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

Counsel for Applicant :- R.B.S. Rathaur

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri R.B.S. Rathaur, learned counsel for the accused-applicant as well as Shri Ranvijay Singh, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of accused/applicant **Sanjesh Kumar** on bail, who is involved in Case Crime No. 269 of 2022, under Sections 363, 376(3) I.P.C. and Sections 5/6 of POCSO Act, Sections 3(2)(v) of S.C/S.T Act, Police Station- Shivgarh, District Raebareli.

3. Learned counsel for the applicant submitted before the Court that P.W.-2 (prosecutrix) has been declared hostile by the trial Court. She has deposed before the Court that she had left her house alone and had gone to Lucknow, where she met an old lady and she went along with that lady to a place which was not known to her. She further deposed that she lived there and the lady used to look after her needs. After 2-3 months, she came back to her house. She further stated that at the behest of police, she had given her statement, which was later denied by her and she fully denied the prosecution case. She further deposed that the police had taken her signatures on a blank paper and whatever statement was given by her before the Magistrate, the same was given under the pressure of police.

4. Learned counsel for applicant has further drawn attention of the Court towards the statement of P.W.-1 father of prosecutrix, who also has not supported the prosecution case. He further stated that once the fact witnesses have been examined and they have become hostile, the presumption goes in favour of the applicant and at the present moment, it cannot be inferred that the applicant had committed any crime as the whole version of the F.I.R has been denied by the prosecutrix and also there is no likelihood of the trial being concluded in the near

future. He further stated that there is no criminal history against the applicant and he is languishing in jail since 13.09.2022.

5. Learned A.G.A. has, however, opposed the prayer for grant of bail but he could not dispute that P.W.-2 has been declared hostile and P.W.-1 has not supported the prosecution case.

6. Considering the facts and circumstances of the case, perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that P.W.-2, prosecutrix has been declared hostile, the argument that P.W.-1, the father of deceased has not supported the prosecution case, I find it to be a fit case for grant of bail.

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

8. Let the accused/applicant **Sanjesh Kumar** involved in above-mentioned case be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned subject to 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.

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 :- 30.11.2023

DiVYa/Rajneesh