

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12254 of 2023

Applicant :- Seshmani Saran @ Sintu Mishra @ Seshmani Mishra (In Fir)

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

Counsel for Applicant :- Abhishek Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Mohd. Asif Khan, learned A.G.A. for the State and perused record.

2. This is second bail application filed on behalf of applicant. The first bail application Crl. Misc. Bail Application No.5250 of 2022 was rejected by Hon'ble Mr. Justice Dinesh Kumar Singh on 30.9.2023. While rejecting the first application for bail, the Court observed that the matter is heinous and evidence is available against the applicant which indicates that he is not entitled for bail.

3. Learned counsel for the applicant has submitted that the merit of the case has not been discussed in the first rejection order. He has further pointed out that the statement of PW-1 has also been recorded after rejection of first bail application, therefore, he has further cause of action that is why, he has filed the second bail application with a prayer to enlarge him on bail in Case Crime No.410 of 2020 under Section 376, 504, 506 IPC, PS Kotwali Ayodhya, district Ayodhya.

4. Learned counsel for the applicant has submitted that the prosecutrix lodged FIR on 11.6.2020 and in the FIR she has mentioned the date of incident of rape near about two years back. He has submitted that the statement of prosecutrix under Section 164 CrPC also indicates that she has levelled allegation of rape prior to two years. It has been submitted by the learned counsel for the applicant that the prosecutrix herself has deposed before the Court that on the 'Facebook', the intimacy developed between the applicant and the prosecutrix and she was called at Faizabad and physical relation was established and its video was made. Learned counsel for the applicant has further submitted that the prosecutrix has refused for medical examination and two years belated FIR has been lodged by her and no date of incident has been mentioned by her either in the

FIR or in the statement under Section 164 CrPC.

5. Learned counsel for the applicant has submitted that the prosecutrix was married lady and her marriage had taken place with Rajiv Lochan Sharan and out of wedlock a child was born on 2.5.2018 a copy of birth certificate issued by the Government of Haryana, Department of Health Services, FCA, Ballabhgarh has been annexed to the bail application as Annexure No.6. Learned counsel for the applicant has submitted that the applicant was disciple of Rajiv Lochan Sharan and he was residing at Ayodhya along with him. He has further stated that Mahant Siya Sharan has executed a registered Power of Attorney in the Office of Sub-Registrar, Ayodhya dated 18.9.2019. By the said Power of Attorney, the applicant has been entrusted to look after the affairs of Sadguru Badhaee Bhawan, Swarg Dwar, Ayodhya, which is a temple. The said Power of Attorney indicates that Mahant Siya Ram Sharan was not happy with Rajiv Lochan Sharan that is why, his power to manage the temple was terminated and the applicant has been entrusted to look after the affairs of the temple. Learned counsel for the applicant has invited attention of this Court towards the suit filed for declaration by the Trust of the temple Sadguru Badhaee Bhawan, Swarg Dwar, Ayodhya in which Rajiv Lochan Sharan is also a party and injunction is sought against him.

6. Learned counsel for the applicant has further submitted that Rajiv Lochan Sharan is husband of the prosecutrix and his power was terminated to look after the affairs of the temple that is why, with the help of the prosecutrix who is his wife, the present case has been lodged that too, after two years from the alleged date of occurrence.

7. Learned counsel for the applicant has further invited attention of this Court towards the statement of the PW-1 prosecutrix in which she has no knowledge about the name of village. She has also stated that she has not gone to her inlaws' house and she has stated that she was married with Arvind. Learned counsel for the applicant has submitted that very cleverly, the prosecutrix has changed the name of Rajiv Lochan Sharan and the entire statement goes to show that she has not gone to inlaws' house, nor she has knowledge of the village. Learned counsel for the applicant has further submitted that the husband of the prosecutrix Rajiv Lochan Sharan (changed name Arvind) hatched conspiracy against the applicant and false case has been lodged against the applicant to create pressure because the power of her husband has been terminated to look after the affairs of the temple and the applicant was entrusted by the Trustee of the temple. He has further submitted that the

prosecutrix has not mentioned anything neither in the FIR or in the statement under Section 164 CrPC regarding her marriage but while she was summoned before the Trial Court, she has for the first time claimed that she was married and birth certificate of her child indicates that she was married. He has submitted that she was married lady and major and at the most, if the case is seen at its face value, it is a case of consent and it is not a case of rape.

8. Learned counsel for the applicant has explained the criminal history of the applicant in para-21 (1) case crime No.644 of 2020 under Section 302, 34, 506 IPC, PS Ayodhya Kotwali, district Ayodhya in which the applicant is on bail a copy of bail order is annexed as Annexure No.12 to the bail application; (2) case crime No.48 of 2021 under Section 3 (1) U.P. Gangster Act, PS Ayodhya Kotwali, district Ayodhya which is pending. Learned counsel for the applicant has submitted that the applicant is in Jail since 17.12.2020.

9. On the other hand, Sri Mohd. Asif Khan, learned A.G.A. has opposed the bail and submitted that the statement of prosecutrix has been recorded before the Trial Court in which she has levelled allegation of rape, therefore, it is not a fit case for bail to be granted.

10. Considering over all facts and circumstances of the case, the argument that the prosecutrix got falsely implicated the applicant due to retaliation for the reason that the applicant has been entrusted to look after the affairs of the temple through registered Power of Attorney by terminating the services of husband of the prosecutrix, the argument that two years belated FIR has been lodged without explanation, the argument that the prosecutrix refused for medical examination, it is a fit case for bail.

11. Let the applicant, Seshmani Saran @ Sintu Mishra @ Seshmani Mishra 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.

12. 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 :- 16.10.2023
Rajneesh JR-PS)