

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12222 of 2023

Applicant :- Sachin Rai

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

Counsel for Applicant :- Indu Prakash Singh, Pooja Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.

2. Heard Sri Indu Prakash Singh, learned counsel for the applicant and Sri Akhilesh Kumar Srivastava, learned A.G.A. for the State.

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.147 of 2023, under sections 452, 376-D, 506 IPC, Police Station Dhammaur, District Sultanpur.

4. It has been submitted by learned counsel for the applicant that FIR is lodged by the prosecutrix herself, who is aged about 30 years, a married lady. In the FIR, she has stated that on 10.03.2023 at about 10 O'clock in the night when she was sleeping alone in her house, the applicant and one unknown person came there and established physical relation upon her against her will. She further stated in the FIR that one unknown person made video and thereafter she was sexually exploited by him on the pretext that the applicant will viral her video in the society. She further mentioned in the FIR that on 28.04.2023 between 10-11 in the night, the applicant and two known persons entered her house and committed rape upon her and third cause of action arose that on 02.07.2023 at about 08.00 p.m. when she had gone out side of her house for nature call, the applicant caught hold her, in the meantime, her husband came to the place of occurrence, she told the entire facts to her husband. It has been submitted by learned counsel for the applicant that no evidence was collected by the Investigating officer regarding obscene photographs and video, therefore I.T.

Act has not been invoked.

5. Learned counsel for the applicant has further submitted that first cause of action arose on 10.03.2023 but no report has been lodged by the prosecutrix. Similarly, second time cause of action arose on 28.04.2023 where three persons are alleged to have been committed rape upon her but no FIR was lodge, however, at the belated stage, FIR has been lodged on 09.07.2023.

6. It has been submitted by learned counsel for the applicant that the statement recorded under section 164 Cr.P.C. of the prosecutrix is quite contradictory. Learned counsel for the applicant has annexed the Scholar's Register & Transfer Certificate Form issued by Principal, Rajkiya High School, Haji Patti, Sultanpur, as Anneuxre no.SA-2 to the supplementary affidavit, which indicates that the date of birth of the applicant is 14.01.2005 and at the time of incident he was just 18 years of age. It has been submitted by learned counsel for the applicant that mother of the applicant had given an application to Superintendent of Police, Sultanpur on 05.07.2023 in which she has mentioned that there is village enmity between the husband of the prosecutrix and the mother of the applicant. He has also submitted that due to enmity in the village and the aforesaid application given to the Superintendent of Police, Sulanpur, the applicant has been falsely implicated. He has also submitted that a false case has been lodged against the applicant because many months had passed from the date of first cause of action but no FIR was lodged and she did not tried to lodge FIR.

7. Learned counsel for the applicant has submitted that co-accused Rajesh Kori and Rinku Rai have been granted bail by coordinate Bench this Court vide orders dated 09.10.2023 and 24.08.2023 passed in Criminal Misc. Bail Application Nos. 11232 of 2023 and 10566 of 2023 respectively. He also submitted that in the statement of the prosecutrix recorded under section 161 Cr.P.C. the allegation of rape is also levelled against the aforesaid co-accused,who have been granted bail. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 10.07.2023.

8. Learned A.G.A. has opposed the prayer for bail and

has submitted that the statement of the prosecutrix recorded under section 164 Cr.P.C. as well as the FIR indicate that allegation of rape is levelled against the applicant as such the applicant is not entitled for bail.

9. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that at the belated stage FIR has been lodged and there is no plausible explanation is given by the prosecutrix side why the FIR was not lodged on 10.03.2023 when the first cause of action arose and the FIR was lodged on 09.07.2023, the argument that no evidence was collected by the Investigating Officer regarding obscene photographs or video, the argument that co-accused Rajesh Kori and Rinku Rai have been granted bail by this Court and the argument that due to village enmity the applicant has been falsely implicated, therefore, I am of the opinion that the applicant is entitled to be released on bail.

10. Let the applicant, namely, **Sachin Rai**, 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.

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 :- 8.12.2023

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