

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12265 of 2023

Applicant :- Nanke Tiwari

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

Counsel for Applicant :- Purnima Mayank

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Ms. Purnima Mayank, learned counsel for the accused-applicant as well as Shri Ravish Chandra Mishra, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Nanke Tiwari** on bail, who is involved in Case Crime No. 62 of 2022 under Sections 376, 458, 506 I.P.C, Police Station Khargupur, District Gonda.

3. Learned counsel for the applicant submitted that the First Information Report indicates the date of incident as 19.02.2022, but no F.I.R was lodged by the prosecutrix promptly. After about two months, an application under Section 156 (3) Cr.P.C. was moved on 16.03.2022 for lodging the F.I.R. and in pursuance of the order of the trial Court, the First Information Report was lodged on 01.05.2022. Learned counsel for applicant further submitted that the statement of prosecutrix under Section 164 Cr.P.C was recorded wherein she has deposed that the incident took place in the month of March, whereas, in the F.I.R., she has mentioned the date of incident as 19.02.2022. Learned counsel for applicant next submitted that in the statement of the father-in-law of the prosecutrix, it has come on record that the prosecutrix had gone to Punjab along with her husband on 08.05.2022 without recording her statement under Section 164 Cr.P.C. and the same was recorded on 22.08.2022 i.e. after three months from the date of lodging the F.I.R. He further submitted that the prosecutrix is a married lady of 40 years and her medical examination does not support the prosecution case and no opinion of sexual assault or rape has been given by the doctor and no internal or external injury was seen on the body of the prosecutrix except for the complaint of abdomen pain. The medical report indicates that the prosecutrix was medically examined on 04.05.2022, and the date of incident 19.02.2022, which clearly indicates that there was delay of two and a half months in conducting medical examination of prosecutrix.

4. Learned counsel for applicant further submitted that the F.I.R. indicates that prior to the present case, the applicant

was challaned by the Police under Section 151, 107, 116 Cr.P.C and compromise had taken place in the police station. This fact goes to indicate that there was enmity between the parties, therefore, the present F.I.R. has been lodged levelling allegation of rape against the applicant. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 24.08.2022.

5. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that the statement of prosecutrix under Section 164 clearly indicates that the applicant committed offence against her, therefore, bail of the applicant is liable to be rejected.

6. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that medical examination of the prosecutrix was much belated i.e. after two and a half months from the date of alleged incident and the same is not supporting the prosecution case, the argument that the prosecutrix is a married lady of 40 years, the argument that there is major contradiction between the statement of prosecutrix under Section 164 Cr.P.C. and the version of the First Information Report, the argument that earlier the applicant was challaned under Section 151, 107 and 116 Cr.P.C by police on being reported by the prosecutrix and there was enmity between the parties, that is why the present F.I.R. has been lodged against the applicant, I find it to be a fit case for grant of bail.

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

8. Let the applicant **Nanke Tiwari** 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 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 :- 16.10.2023
DiVYa