

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12281 of 2023

Applicant :- Sujeet @ Surjeet

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

Counsel for Applicant :- Pankaj Gupta, Narendra Gupta

Counsel for Opposite Party :- G.A., Bajhul Quamar Siddiqui

Hon'ble Brij Raj Singh, J.

1. Counter affidavit filed on behalf of the State and Counter affidavit filed on behalf of the complainant, are taken on record.

2. Heard Sri Pankaj Gupta, learned counsel for the applicant, Sri B.Q. Siddiqui, learned counsel for the complainant and Mohd. Asif Khan, 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.0138 of 2023 under sections 342, 376, 354 (Gha), 504, 506 and 509 IPC, Police Station Madhoganj District Hardoi.

4. It has been submitted by learned counsel for the applicant that father of the prosecutrix lodged FIR under sections 354 (Gha), 504, 506 and 509 IPC and there is allegation of molestation against the applicant. Learned counsel for the applicant has invited attention of this court towards the statement of the prosecutrix recorded under section 161 Cr.P.C. in which she has stated that on 07.04.2023, she was molested by the applicant, however, there is no allegation of rape in the FIR as well as in the statement recorded under section 161 Cr.P.C. Learned counsel for the applicant has further submitted that the prosecutrix has changed her version in the statement recorded under section 164 Cr.P.C. and she has also changed the date of incident i.e. 06.04.2023 and she has levelled the allegation that the applicant has committed rape upon her while she had gone nature's call. She further deposed before the Court that the applicant took her to his house where the rape was committed by the

applicant. Learned counsel for the applicant has further submitted that the applicant and the prosecutrix are neighbor and the statement of section 164 Cr.P.C. indicates that it is a false story because there is no reason to believe that in the house of the applicant rape was committed whereas she has her own family members and also the family members of the applicant but no alarm was raised by the prosecutrix. He has also submitted that the medical report is not supporting the prosecution case and no opinion of rape has been given by the doctor in his medical report and no internal or external injury was found on the person of the prosecutrix and as per record she is aged about 21 years. 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 25.07.2023.

5. On the other hand, Sri B.Q. Siddiqui, learned counsel for the complainant has opposed the prayer for bail. He has submitted that the statement of section 164 Cr.P.C. of the prosecutrix shows that the rape was committed by the applicant as such he is not entitled for bail. Mohd. Asif Khan, learned A.G.A. has also opposed the prayer for bail .

6. 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 there is change version in between FIR and in the statement recorded section 164 Cr.P.C. and the argument that medical report is not supporting the prosecution case, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Sujeet @ Surjeet**, 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 :- 27.10.2023

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