

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12546 of 2023

Applicant :- Sitesh

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

Counsel for Applicant :- Ajeet Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Counter affidavit filed on behalf of the State and rejoinder affidavit filed on behalf of the applicant, are taken on record.
2. Notice has been served upon opposite party no.2 but none has appeared on behalf of opposite party no.2 to press the present bail application.
3. Heard learned counsel for the applicant and Sri Diwakar Singh, learned A.G.A. for the State.
4. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 642 of 2022 under sections 376DA, 372, 373, 344 IPC and 5L/6 of POCSO Act and 3/4/5 of Information Traffic (Prevention) Act, Police Station Atrauli, District Hardoi.
5. Learned counsel for the applicant has invited attention of this Court towards the statement of the prosecutrix recorded under section 164 Cr.P.C. in which she has not levelled the allegation of rape against the applicant. She has deposed before the court that other co-accused had forced to do immoral work and physical relations were established with other persons for immoral work. Learned counsel for the applicant has submitted that the prosecutrix has been examined as P.W.-1 before the trial court and her statement has been annexed as Annexure no.SA-1 to the supplementary affidavit dated 19.10.2023, In the cross-examination, the prosecutrix has stated that the applicant and all the co-accused, who were standing in the Witness Box did not do wrong against her. She further deposed that no rape was committed and nobody had forced her to do immoral work. however, she

made allegation against Abhishek, who had committed rape against her and she further denied the entire prosecution case against the applicant and deposed that on the behest of police, she had given statement and she also denied the statement recorded under section 164 Cr.P.C. Learned counsel for the applicant has submitted that all the co-accused are family members and have been falsely implicated in the present case. It has been submitted by learned counsel for the applicant that after looking into the statement of the prosecutrix (P.W.-1) at the moment, it cannot be inferred that the applicant was involved in the commission of crime. He has also explained the criminal history of the applicant in para-20 of the rejoinder affidavit and the applicant is in jail since 15.11.2022.

6. On the other hand, learned A.G.A. has opposed the prayer for bail but could not dispute the aforesaid facts.

7. 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 in the under section 164 Cr.P.C. statement nothing adverse is stated against the applicant and the argument that during examination before the trial court, the prosecutrix has not supported the prosecution case against the applicant, therefore, I am of the opinion that the applicant is entitled to be released on bail.

8. Let the applicant, namely, **Sitesh**, 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 :- 28.11.2023

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