

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14606 of 2022

Applicant :- Neeraj

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

Counsel for Applicant :- Ajay Kumar Tripathi, Vijay Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Akhilesh Kumar Srivastava, learned AGA for the State and perused the record.

Rejoinder affidavit filed by the learned counsel for the applicant is taken on record.

2. The present bail application has been filed on behalf of the applicants for bail in case crime No.268 of 2022 under Section 452, 376, 506 IPC, PS Beniganj, district Hardoi.

3. Learned counsel for the applicant has submitted that the prosecutrix herself lodged FIR in which she has levelled allegation that prior to two years, physical relation was established forcibly by the applicant upon her, and she has further stated that again on 15.12.2021, the applicant entered her house and committed rape upon her. It has been submitted by the applicant that the FIR was lodged on 7.2.2022 which is much belated. It has been submitted that a bare perusal of the FIR indicates that it is a case of consent which is also being supported by the statement of the prosecutrix under Section 164 CrPC in which she has deposed that out of pretext of marriage, the physical relation was established by the applicant.

4. Learned counsel for the applicant has invited attention of this Court towards the statement of prosecutrix which has been recorded before the Trial Court and she stated that she had gone along with the applicant to Delhi prior to marriage of the applicant and, thereafter, again after marriage of applicant with Sudha, she had gone to Delhi and remained there for two months. He has further submitted that the statement in cross-examination of the prosecutrix indicates that the prosecutrix is consenting party and even after marriage of applicant with Sudha, she had gone along with the applicant to Delhi and remained there for two months. It has been submitted that the prosecutrix was major at the relevant time. He has further

submitted that while being cross-examined before the Trial Court, she has admitted that she had named one Puneet under Section 376 IPC in other criminal case in which she had compromised and this has been admitted by her in her cross-examination in the present case. He has submitted that the credential of the prosecutrix is totally doubtful after looking into the statement of the prosecutrix that she also had relations with one Puneet as compromise was done by her. He has further submitted that after looking into the statement of the prosecutrix under Section 164 CrPC, as well as the cross-examination before the Trial Court, it is apparent that it is a case of consent and the applicant has been falsely implicated. He has submitted that the applicant has no criminal history and he is in Jail since 19.8.2022.

5. Learned A.G.A. has opposed the prayer for grant of bail but could not dispute the fact that in her cross-examination, the prosecutrix had admitted that she had gone to Delhi along with the applicant two times.

6. Considering the submissions of learned counsel for parties, the argument of consent, the argument that the prosecutrix had accompanied the applicant two times to Delhi out of her free will, it is a fit case for bail.

7. Let the applicant Neeraj 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 misuse 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.

8. 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 :- 10.10.2023
Rajneesh JR-PS)