

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 12651 of 2023

**Applicant :-** Nutan Tripathi @ Niraj

**Opposite Party :-** The State Of U.P. Thru. The Prin. Secy. Home Deptt., Lko. And Another

**Counsel for Applicant :-** Abhishek Awasthi, Ram Saran Awasthi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh, J.**

1. Counter affidavit filed by learned AGA and rejoinder affidavit filed by the applicant, both are taken on record.
2. Heard Shri Ram Saran Awasthi, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA for the State and perused the record.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.343 of 2023, under Sections 376D, 506 I.P.C., Police Station Ram Nagar, District Barabanki.
4. It is contended by learned counsel for the applicant that the husband of the prosecutrix lodged report on 21.06.2023 alleging that on 07.06.2023 his wife was sleeping in the house and the applicant and other co-accused Ram Kishun entered into the house and over powered the prosecutrix and committed rape upon her. It has been submitted by learned counsel for the applicant that though the incident as per FIR had taken place on 07.06.2023, but the FIR was lodged on 21.06.2023 which is much belated.
5. It has been submitted that victim had lodged another FIR bearing case crime no. 323 of 2023 under Sections 504, 506 IPC on 13.06.2023 in which she has mentioned that she was abused and scolded by the applicant on 08.06.2023 and she has admitted that there is land dispute between her husband and the applicant. Learned counsel submitted that applicant has been falsely implicated due to the reason that there is enmity between the parties. Learned counsel submitted that the medical report also does not support the prosecution case and no injury has been found on the body of the prosecutrix.
6. Learned counsel further submitted that co-accused Ram Kishun having identical role has already been granted bail by coordinate Bench of this Court on 19.10.2023 in Criminal Misc. Bail Application No.12431 of 2023 in which a detail order has been passed and the case of the applicant is at par with the case of co-accused, therefore, applicant is entitled to be released on bail. The criminal history of the

applicant has been explained satisfactorily in para 14 of the rejoinder affidavit. The applicant is in jail since 26.07.2023.

7. Learned AGA opposed the prayer for bail and submitted that applicant has history of many criminal cases but could not dispute the fact that identical role assigned to co-accused has been granted bail.

8. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and considering the argument that identical role assigned to co-accused Ram Kishun has already granted bail by this Court ; argument that enmity is admitted by the prosecutrix in FIR No.323 of 2023 under Sections 504, 506 IPC; argument that medical report does not support the prosecution case, in my considered opinion, it is a fit case for grant of bail.

9. Let the applicant, **Nutan Tripathi @ Niraj** 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.

10. 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 :- 22.11.2023**

Pks