

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13010 of 2023

Applicant :- Bablu Rawat

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

Counsel for Applicant :- Shailendra Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Sri Mayank Pandey, holding brief of Sri Shailendra Kumar Mishra, learned counsel for the applicant, Ms. Priyanka Pandey, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.0338 of 2023 under Section 376-D/304/323/504/506/411 IPC PS Sushant Golf City, district Lucknow.

3. Learned counsel for the applicant has submitted that co-accused Anshul Yadav has been granted bail by this Court on 19.10.2023 in Crl. Misc. Bail Application No.12556 of 2023, contained in Annexure No.7 to the bail application. The relevant portion of the said order dated 19.10.2023 is quoted below:-

"1. Heard Mrs. Suniti Sachan, learned counsel for the accused-applicant as well as Shri Rajesh Kumar Singh, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of accused/applicant Anshul Yadav on bail, who is involved in Case Crime No. 338 of 2023, under Sections 376D, 394, 411, 323, 504, & 506 I.P.C., Police Station- Sushant Golf City, District Lucknow.

3. Learned counsel for the applicant submitted that the prosecutrix had lodged the First Information Report, wherein it is mentioned that the prosecutrix was in love with co-accused Bablu Rawat for the last three years and he took her to a Hotel in Lucknow, spiked her drink, after consuming it, the prosecutrix became unconscious and the co-accused committed rape with the prosecutrix and also took her photographs and videos. It is further stated in the F.I.R. that the applicant also committed rape with the prosecutrix on the threat given by co-accused to make the video and photographs viral. Learned counsel for applicant further submitted that no incriminating article has been recovered from the possession or on the pointing out of the applicant. Learned counsel further submitted that the allegation that on the pretext of making the video viral, the said incident took place,

is totally false for the reason that no obscene material has been recovered by the Investigating Officer. In the statement of prosecutrix recorded under Section 164 Cr.P.C, she has not named the applicant, rather she has named the co-accused along with one unknown person and the said statement was recorded after lodging of the F.I.R.

4. Learned counsel for the applicant further submitted that the version of F.I.R and the statement of prosecutrix under Section 164 Cr.P.C, is contradictory to each other and the medical of the prosecutrix conducted after long lapse of time i.e. on 05.07.2023, is not supporting the prosecution case and no opinion of rape is given by the Doctor. Learned Counsel for applicant further submitted that the case of applicant is distinguishable from the case of co-accused. Learned counsel for applicant further lastly submitted that the prosecutrix is aged about 22 years, and is major and as per statement of prosecutrix under Section 164 Cr.P.C, she appears to be a consenting party with the co-accused and the applicant has been falsely implicated in the present case only for the reason that he is the friend of co-accused, therefore, the applicant is entitled to be released on bail and also there is no criminal history against the applicant and he is languishing in jail since 07.07.2023.

5. Learned A.G.A. has opposed the prayer for grant of bail but he could not dispute the fact that medical report of the prosecutrix is not supporting the prosecution case.

6. Considering the facts and circumstances of the case, by perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that there is change version between the F.I.R and the statement of prosecutrix recorded under Section 164 Cr.P.C and there is major contradiction, the argument that the Investigating Officer has not collected the video or obscene material and applicant is not named in the statement under Section 164 Cr.P.C, I find it to be a fit case for grant of bail.

7. Accordingly, the bail application is allowed."

4. Learned counsel for the applicant has submitted that the case of the applicant is par with the co-accused Anshul Yadav who has been granted bail and he is adopting the grounds and arguments as have been taken in the case of co-accused. He has submitted that the applicant has no criminal history and he is in Jail since 10.7.2023.

5. Learned A.G.A. opposed the prayer for bail but could not dispute the fact that the co-accused have been granted bail and the case of the applicant is at par with the co-accused.

6. Considering over all facts and circumstances of the case, the argument that the case of the applicant is at par with the co-accused who has been granted bail, it

is a fit case for bail.

7. Let the applicant, Bablu Rawat 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.

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 :- 3.11.2023

Rajneesh JR-PS)