

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13186 of 2023

Applicant :- Babadeen

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

Counsel for Applicant :- Rakesh Kumar Saini

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Counter affidavit filed by learned AGA is taken on record.
2. Heard Shri Rakesh Kumar Saini, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA-I 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.18 of 2004, under Sections-363, 366, 376 I.P.C., P.S.- Rehra Bazar, District Balrampur.
4. Learned counsel for the applicant submitted that father-in-law of the prosecutrix lodged report in which he has mentioned that Mani Ram Verma, Dhani Ram Verma and Ramu had enticed away his daughter-in-law. Learned counsel submitted that the prosecutrix had married with co-accused Dhani Ram and he has annexed marriage certificate dated 07.08.2023 issued by the Registrar, Gonda under Hindu Marriage Act.
5. Learned counsel for the applicant submitted that the prosecutrix in her statement recorded under Section 164 Cr.P.C. has stated that she did not want to go along with Ram Pal, who was her earlier husband and she had gone out of her free will outside the house of the earlier husband. The statement further indicates that she has levelled allegation of rape against eight persons.
6. Learned counsel further submitted that Dhani Ram Verma and Mani Ram Verma are real brothers whereas applicant is the brother-in-law of co-accused Dhani Ram Verma, as such he has been falsely implicated for the reason that he is relative otherwise Dhani Ram Verma had married the prosecutrix. The prosecutrix was major at the relevant time.
7. It has been submitted that Mani Ram Verma had filed petition under Section 482 Cr.P.C. challenging the charge sheet and the entire proceedings before this Court, in which an interim protection was granted by this Court and he was released on bail. Learned counsel submitted that the medical report does not support the prosecution case.

The applicant has no criminal history. The applicant is in jail since 31.10.2023.

8. Learned AGA opposed the prayer for bail and submitted that the statement of the prosecutrix indicates that rape has been committed by the applicant, thus the bail application is liable to be rejected.

9. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering the nature of FIR, argument of consent, argument that the applicant was not named in the FIR, argument that the prosecutrix had married with co-accused Dhani Ram Verma on her own will and marriage certificate of Registrar Gonda is annexed as Annexure 2; argument that it is not a case of rape, argument that applicant has been falsely implicate due to reason that he is relative of co-accused, thus, in my opinion, I find it to be a fit case for bail.

10. Let the applicant, **Babadeen**, 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.

11. 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 :- 24.11.2023

Pks