

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13314 of 2023

Applicant :- Mayaram Yadav

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

Counsel for Applicant :- Amit Kumar Srivastava,Indrajeet

Counsel for Opposite Party :- G.A.,Pankaj Kumar Verma

Hon'ble Brij Raj Singh,J.

1. Heard Shri Amit Kumar Srivastava, learned counsel for the applicant, Shri Vinod Yadav, learned AGA for the State and Shri Pankaj Kumar Verma, learned counsel for the complainant and perused the record.

2. This is the second bail application. The first bail application was dismissed as not pressed by this Court on 31.10.2023 and applicant was granted liberty to file a fresh.

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.314 of 2022, under Sections 376, 504, 506 I.P.C., Police Station Ram Nagar, District Barabanki.

4. It is contended by learned counsel for the applicant that the prosecutrix, aged about 21 years lodged FIR making allegation that for the last one year, physical relations was established by the applicant on the pretext of marriage but marriage has been flatly denied by the applicant and his family member. She has further stated that many times physical relations was established. Learned counsel submitted that it is a case of consent and the prosecutrix is major girl of 21 years and she had love affair with Ghanshyam and has stated that he was in relation with the prosecutrix and wanted to marry her.

5. Learned counsel stated that marriage of the prosecutrix was settled with present applicant and as soon as he came to know the said fact he was unhappy. It has been further submitted that in para 10 that there was whatsapp chat between the prosecutrix and Ghanshyam Yadav whose mobile No.7800875093 indicates that they had love affair. Learned counsel further submitted that as soon as the applicant came to know that prosecutrix had love affair with another person and when he saw obscene photographs, he refused for marriage. Learned counsel further submitted that applicant has been hurt by the act of prosecutrix that is why he denied for marriage otherwise what ever physical relation was there, it was out of love and it was not rape.

6. He submitted that the medical report of the prosecutrix does not support the prosecution case as doctor has not given any definite opinion of rape. Learned counsel submitted that if the physical relation is established out of free will, the provisions of Section 375 IPC would not attract. The applicant has no criminal history. The applicant is in jail since 30.09.2023.

7. Learned AGA as well as learned counsel for the complainant opposed the prayer for bail and submitted that the statement of the prosecutrix recorded under Section 164 Cr.P.C. indicates that rape was committed therefore, bail is liable to be rejected.

8. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties, considering the argument of consent; argument that prosecutrix had love affair with another person and the applicant has been falsely implicated ; argument that medical report is also not supporting the prosecution case and doctor has not given any definite opinion of rape therefore, it is a fit case for bail.

9. Let the applicant, **Mayaram Yadav** 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 :- 24.11.2023

Pks