

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13320 of 2023

Applicant :- Deependra Kumar

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

Counsel for Applicant :- Anurag Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Anurag Kumar Singh, learned counsel for the applicant, Shri MVS Chauhan, learned AGA for the State and perused the record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.0109 of 2023, under Sections 376, 504, 506 I.P.C. Police Station Bazar Khala, District Lucknow.
3. Learned counsel for the applicant submitted that FIR has been lodged by the prosecution by way of moving 156(3) Cr.P.C. on 21.04.2023 for lodging of the FIR. Thereafter, FIR was lodged on 26.07.2023 in pursuance of the direction issued by the Court. As per the allegation narrated in the FIR, the prosecutrix has admitted that she is a married lady and for the last five years, she has consensual relations with the applicant. She has levelled allegation that on the pretext of marriage, the applicant has established physical relations with her and later on he refused for marriage.
4. Learned counsel has invited attention of this Court towards the statement recorded under Section 164 Cr.P.C. in which the prosecutrix has reiterated almost the same version as in the FIR. She has deposed that she was married with one Anil Kumar on 26.4.2014, which is evident from Annexure 2 to the affidavit filed in support of the bail application. Learned counsel further submitted that the prosecutrix is 28 years of age and long consensual relations goes to indicate that the offence of rape does not come within the purview of Section 375 IPC. Learned counsel further submitted that the medical report is also not supporting the prosecution case. The applicant has no criminal history. The applicant is in jail since 14.09.2023.
5. Learned counsel has relied upon various judgments passed by the Hon'ble Supreme Court in the case mentioned below :
 - (i) *Sonu alias Subhash Kumar vs. State of Uttar Pradesh*

and another (2021) SCC OnLine SC 181 ;

(ii) Uday vs. State of Karnataka (2003) 4 SCC 46 ;

(iii) Deepak Gulati vs. State of Haryana (2013) 7 SCC 675;

(iv) Naim Ahmad vs. State (NCT of Delhi) 2023 SCC Online SC 89 and

(v) Shambhu Kharwar vs. State of Uttar Pradesh and another 2022 SCC Online SC 1032.

6. Learned AGA opposed the prayer for bail and submitted that the statement of the prosecutrix under Section 164 Cr.P.C. goes to indicate that physical relations was established on the pretext of marriage by the applicant against her will and it is a case of rape, as such bail of the applicant is liable to be rejected.

7. Considering the over all facts and circumstances of the case and after hearing learned counsel for the parties, considering the argument of consent, argument that for the last five years, prosecutrix has admitted that she was having consensual relations with the applicant, which goes to indicate that no offence of has been committed, therefore, I find it to be a fit case for grant of bail.

8. Let the applicant, **Deependra Kumar**, 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.

9. 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 :- 8.11.2023

Pks