

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13389 of 2023

Applicant :- Pradeep Kumar Prajapati

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

Counsel for Applicant :- Santosh Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Shri Dheerendra Pratap Singh, Sub-Inspector, Police Station Bewana, District Ambedkar Nagar has put in appearance before this Court and has stated that the prosecutrix is not willing to appear before Court and get her statement recorded. The personal appearance of Shri Dheerendra Pratap Singh is hereby exempted.

2. Heard Shri Santosh Kumar Srivastava, learned counsel for the accused-applicant as well as Shri G.D Bhatt, learned A.G.A. for the State and perused the record.

3. This bail application has been filed seeking release of the accused/applicant **Pradeep Kumar Prajapati** on bail, who is involved in Case Crime No. 102 of 2023 under Sections 376, 323, 504, 506 I.P.C, Police Station Bewana, District Ambedkar Nagar.

4. Learned counsel for the applicant submitted that First Information Report has been lodged by the prosecutrix herself alleging that the applicant established physical relation with her on the pretext of marriage. Learned counsel for applicant submitted that the prosecutrix used to talk to the applicant on phone and later on, the proposal for marriage was denied by the applicant as well as his family members. He further submitted that the now the applicant is ready to marry the prosecutrix, but the prosecutrix has refused to marry the applicant, and today, Shri Dheerendra Pratap Singh, Sub-Inspector, Police Station Bewana, District Ambedkar Nagar, who has put in his appearance before the Court today, has made a statement that the prosecutrix is not willing to appear before the Court.. Learned counsel for applicant further submitted that the prosecutrix has refused to undergo medical examination, and it appears to be a case of consent. Learned counsel for applicant has further submitted that the prosecutrix had established physical relation with the applicant out of her free will and he further submitted that the case not coming within the purview of rape and Section 375 I.P.C is not attracted in the present case.

5. Learned counsel for the applicant further stated that

there is no previous criminal history of the applicant and he is languishing in jail since 03.08.2023.

6. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that statement of prosecutrix recorded under Section 164 Cr.P.C, clearly indicates that it is a case of rape, therefore, bail is liable to be rejected.

7. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that it is a case of consent, the argument that prosecutrix refused to undergo medical examination, the argument that the prosecutrix refused to appear and record her statement before this Court, the argument that the applicant is ready to marry the prosecutrix but the prosecutrix has refused to marry the applicant, I find it to be a fit case for grant of bail.

8. Accordingly, the bail application is **allowed**.

9. Let the applicant **Pradeep Kumar Prajapati** 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 her 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 :- 29.11.2023
DiVYa/Rajneesh