

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13543 of 2023

Applicant :- Lalu

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

Counsel for Applicant :- Anuradha Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Counter affidavit filed on behalf of the State, is taken on record.

2. Heard Ms. Anuradha Singh, learned counsel for the applicant and Sri Lallaji Maurya, learned brief holder for the State.

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.418 of 2023 under sections 363, 366 and 376 IPC and 3/4 of POCSO Act, Police Station Kotwali Dehat, District Bahraich.

4. It has been submitted by learned counsel for the applicant that mother of the prosecutrix lodged FIR mentioning therein that her daughter was enticed away by the applicant. Thereafter statement of the prosecutrix was recorded under section 164 Cr.P.C. in which she deposed that she had gone to the house of her maternal uncle and she talked to the applicant and asked him to take her away because the family members wanted her not to continue her study. She deposed that out of her free will she had gone to Firozpur alongwith him and for 15 days she remained there with him and out of her free will physical relation was established. Learned counsel for the applicant has submitted that as per medical report, the age of the prosecutrix is between 16-17 years and it has been submitted that the benefit of two years upper age limit may be extended and it may be inferred that the prosecutrix was major at the relevant time. Learned counsel for the applicant has submitted that it is a case of consent and the applicant has been falsely implicated because as per school certificate, the prosecutrix is 16 years and 11 months. The applicant has no previous

criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 29.09.2023.

5. On the other hand, Sri Lallaji Maurya, learned brief holder has opposed the prayer for bail and has submitted that the statement of the prosecutrix recorded under section 164 Cr.P.C. indicates that physical relation was established against a minor girl and the consent of the girl has no meaning as such the crime committed by the applicant comes within the purview of rape, therefore, the applicant is not entitled for bail.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument of consent and the argument that the statement of the prosecutrix recorded under section 164 Cr.P.C. is not supporting the prosecution case and the prosecutrix has deposed that physical relation was established out of her free will, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Lalu**, 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.

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 :- 5.12.2023

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