

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13740 of 2023

Applicant :- Narendra Yadav

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.,Rahul Mishra,Shrish Tiwari

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Rahul Mishra, learned counsel for the complainant, Sri Avishesh Kumar Singh, learned A.G.A. for the State and perused record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.162 of 2021 under Section 323, 342, 366, 376, 406, 504, 506 IPC, PS Ramganj, district Amethi.
3. Learned counsel for the applicant has submitted that the prosecutrix has lodged report under Section 323, 504, 506, 342, 354, 366, 406 IPC on 2.12.2021 in which there is no allegation of rape rather, the allegation of molestation is levelled. He has submitted that in the statement under Section 164 CrPC, the prosecutrix has improved her version and has levelled allegation that rape was committed by the applicant in which his brother and father also supported and assisted while rape was committed by the applicant. He has further submitted that incident as per statement under Section 164 CrPC itself indicates that incident took place in the year 2019 and for the first time, she is giving statement before the Court regarding rape which is after two years. It has been further submitted that the prosecutrix is a married lady of 30 years and at the most it is a case of consensual relation. She has already admitted that the applicant used to come to her shop and relation was developed between them. He has further submitted that the applicant has been falsely implicated. He has submitted that the applicant has no criminal history and is in Jail since 30.9.2023.
4. On the other hand, learned counsel for the complainant has submitted that under Section 164 CrPC, the allegation of rape is levelled against the applicant, therefore, the bail is liable to be rejected. Learned A.G.A. has also opposed the prayer for bail and submitted that allegation of rape is there against the

applicant under Section 164 CrPC, therefore, the bail should be rejected.

5. Considering over all facts and circumstances of the case, the argument that prosecutrix is a married lady of 30 years and she has admitted that there was relation developed by her with the applicant, it is a fit case for bail.

6. Let the applicant, Narendra 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.

7. 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 :- 28.11.2023
Rajneesh JR-PS)