

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13933 of 2023

Applicant :- Nanbabu

Opposite Party :- The State Of U.P. Thru. The Prin. Secy. Deptt. Of Home, U.P. Lko. And Another

Counsel for Applicant :- Shailendra Pathak, Km. Anjali Gautam

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Shailendra Pathak, learned counsel for the accused-applicant as well as Shri MVS Chauhan, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Nanbabu** on bail, who is involved in Complaint Case No. 2222/23/17 under Sections 376-D I.P.C, Police Station Harraiya, District Balrampur.

3. Learned counsel for the applicant submitted that as per complaint, the said incident took place on 05.06.2016 at about 8 O'Clock in the night, but the application under Section 156(3) Cr.P.C was treated as complaint in which the applicant has been summoned and sent to jail. Learned counsel for applicant has further drawn attention of the Court towards the complaint in which the prosecutrix has admitted that the applicant along with his real brother Mansaram caught hold of her outside the village and at the knife-point, they both committed rape with her. She further mentioned that her husband works as a labourer and he had gone outside the village for his work. Learned counsel for applicant has further submitted that in the statement of prosecutrix recorded under Section 200 Cr.P.C, she has given statement that her husband was present in the house which is contradictory to her statement given by her in her complaint under Section 156(3) Cr.P.C. She further admitted in her statement that she had advanced Rs. 20,000/- to Mansaram (brother of the applicant) and the same was not returned by him and this statement of prosecutrix clearly goes to indicate that the applicant has been falsely implicated by her due to the said reason.

4. Learned counsel for applicant further submitted that the medical examination of the prosecutrix was not conducted and the statements of two witnesses, P.W.-1 Akhilesh Kumar and P.W.-2 Badlu (brothers-in-law of the prosecutrix), who have supported the prosecution case is not reliable because they are the relatives of the prosecutrix. Learned counsel for the applicant further stated that there is no previous criminal history of the

applicant and he is languishing in jail since 05.07.2023.

5. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that as per the statements of prosecutrix as well as other witnesses, *prima facie* case is made out that the applicant has committed rape on the prosecutrix, therefore, bail is liable to be rejected.

6. 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 the applicant has been falsely implicated in the present case for the reason that it is admitted by the prosecutrix herself that Twenty Thousand Rupees was advanced by her to co-accused Mansaram (brother of applicant), which was not returned by him, the argument that medical examination has not been conducted, the argument that there is delay in lodging complaint under Section 156(3), the argument that statements of P.W.-1 and P.W.-2 is not reliable as they are the interested witnesses , I find it to be a fit case for grant of bail.

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

8. Let the applicant **Nanbabu** 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.

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 :- 24.11.2023
DiVYa/Rajneesh