

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14701 of 2023

Applicant :- Subedar

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

Counsel for Applicant :- Rakesh Kumar Nayak

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Arun Kumar Verma, 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.94 of 2023 under Section 354-Gha, 507, 506, 376, 452 IPC and Section 67A I.T. Act, PS Maharuwa district Ambedkar Nagar.
3. Learned counsel for the applicant has submitted that prosecutrix who is major, of 21 years of age, lodged FIR under Section 354-Gha, 507, 506, 376, 452 IPC and Section 67A I.T. Act. In the FIR, the prosecutrix has levelled allegation that the applicant made obscene video and on the threat to viral the video, he asked Rs.3,00,000/- from her. He has further submitted that FIR does not indicate the fact that any rape or physical assault was done by the applicant. He has submitted that statement under Section 161 CrPC indicates that prosecutrix has stated that the applicant was known to her for the last two months and she has further alleged that obscene video was made by him. He has submitted that statement under Section 164 CrPC indicates that she has changed her version of FIR and she has stated that on the threat to viral video, rape was committed by the applicant and she has also stated that rape was committed prior to two months. He has further submitted that case has been investigated by the Investigating Officer and while filing chargesheet, he has mentioned that he asked the prosecutrix to provide evidence of obscene material or video but she did not make available any such evidence, therefore, the I.T. Act was expunged and chargesheet has been filed under Section 376/452/506/354-Gha IPC against the applicant.

4. Learned counsel for the applicant has submitted that the changed version of FIR and statement under Section 164 CrPC indicates that the applicant has been falsely implicated and at the most, it may be a case of consent. He has further submitted that the medical report is not supporting the prosecution case. He has submitted that the applicant has no criminal history and he is in Jail since 9.8.2023.

5. Learned A.G.A. opposed the bail and has submitted that as per statement under Section 161 CrPC, it is apparent that the applicant has committed rape and, therefore, the bail should be rejected.

6. Considering over all facts and circumstances of the case, the argument that the prosecutrix has changed her version under Section 161 and 164 CrPC and the argument that prosecutrix is major and medical report is also not supporting the prosecution case, the argument that the allegation under IT Act is not found correct and the chargesheet has not been filed under the alleged offence of IT Act and at the most, it may be a case of consent, it is a fit case for bail.

7. Let the applicant, Subedar 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.

8. 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 :- 14.12.2023

Rajneesh JR-PS)