

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14943 of 2023

Applicant :- Durga @ Aman

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

Counsel for Applicant :- Alok Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Supplementary affidavit filed on behalf of the applicant, is taken on record.
2. Heard learned counsel for the applicant and Sri Ashif Khan, learned A.G.A. 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. 245 of 2023, under sections 452, 354, 376, 504, 506 IPC, Police Station Dahi, District Unnao.
4. It has been submitted by learned counsel for the applicant that FIR has been lodged under sections 452,354 and 504 IPC making allegation that on 01.09.2023 at 05.00 O'clock in the evening, the accused had given his mobile to the prosecutrix for charging and when she came to her house, the applicant entered into her house and molested her. It has been submitted by learned counsel for the applicant that the same version has been reiterated in the statement of section 161 Cr.P.C. by the prosecutrix . However, version of the FIR has been changed and in the statement recorded under section 164 Cr.P.C. the prosecutrix deposed that the applicant entered into her house and committed rape upon her and the date and time is same as mentioned in the FIR.
5. Learned counsel for the applicant has submitted that the prosecutrix was medically not examined and the medical examination has been refused, therefore, the prosecution was unable to prove the case beyond the reasonable doubt. The prosecutrix is aged about 22 years . Learned counsel for the applicant has submitted that the the applicant has criminal history of one case bearing

Case Crime No.0603 of 2022 under section 363,366 IPC, Police Station Gangaghat, District Unnao . He has also submitted that in the aforesaid case final report has been submitted by the Investigating Officer. The applicant is in jail since 15.10.2023.

6. Learned A.G.A. has opposed the prayer for bail and has submitted that in the statment recorded under section 164 Cr.P.C. the prosecutrix has levelled the allegation of rape, as such the bail application of the applicant is liable to be rejected.

7. 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 that there is change version between the FIR and the statement recorded under section 164 Cr.P.C. because in the FIR the allegation of molestation is made, however, in the statement recorded under section 164 Cr.P.C. the prosecutrix has levelled the allegation of rape but the proseuctrix has refused for medical examination,therefore, I am of the opinion that the applicant is entitled to be released on bail.

8. Let the applicant, namely, **Durga @ Aman**, 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 :- 20.12.2023

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