

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15093 of 2023

Applicant :- Durvasha

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

Counsel for Applicant :- Pradeep Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Mohd. Asif Khan, 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 Complaint Case No.629 of 2018 under Section 376 IPC PS Sakran district Sitapur.

3. Learned counsel for the applicant has submitted that admittedly, civil suit for permanent injunction was filed by the prosecutrix against the applicant on 1.11.2012. It is argued that enmity is there between the parties which is evident after looking into the suit filed by the prosecutrix. Thereafter, the prosecutrix filed an application under Section 156 (3) CrPC on 22.8.2014 before the Court to lodge report making allegation that the applicant and his son both committed rape upon her on the gun point. Learned counsel for the applicant has submitted that prosecutrix was not medically examined. The police investigated the case and final report was filed on 24.11.2014 and after taking evidences, the police recorded that incident as alleged by the prosecutrix, was false. The prosecutrix protested the said final report and the applicant has been summoned. Learned counsel for the applicant has submitted that after looking into the evidences it is clear that there is enmity between the parties and prosecutrix is 45 years of age and medical examination was also not done. He has submitted that it is a false implication due to enmity. He has further submitted that the applicant has no criminal history and he is in Jail since 22.11.2023.

4. Learned A.G.A. though opposed the prayer for bail but could not dispute the aforesaid facts. He has submitted that after looking into the statement under Section 200 and 202 CrPC, the applicant has been summoned and there is allegation of rape, therefore, the bail application is liable to be rejected.

5. Considering over all facts and circumstances of the case, the argument that civil suit is pending and there is enmity between the parties, the argument that no medical examination was conducted, the argument that final report was filed in pursuance of application under Section 156 (3) CrPC, the argument that applicant has been falsely implicated, it is a fit case for bail.

6. Let the applicant, Durvasha 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 :- 22.12.2023
Rajneesh JR-PS)