

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29110 of 2023

Applicant :- Shivcharan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Prabhakar Pal, Arun Kumar Tripathi, Rajeev Kumar Singh Parmar

Counsel for Opposite Party :- G.A., Amar Bahadur Maurya, Sushil Kumar Kushwaha

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Rajesh Kumar Singh holding brief of Sri Prabhakar Pal and Sri Arun Kumar Tripathi, learned counsels for the applicant, Amar Bahadur Maurya, learned counsel for the first informant, Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Shivcharan, seeking enlargement on bail during trial in connection with Case Crime No.48 of 2023, under Sections 323, 376, 452, 504, 506 IPC, registered at Police Station Nayagaon, District Etah.
4. The FIR of the present case was lodged on 9.4.2023 by the victim herself against the applicant on the basis of application u/s 156(3) Cr.P.C. alleging therein that on 28.3.2023, the applicant came to her house and stated to settle the dispute with regards to transaction of money and asked her husband to consume liquor on which he refused on which he gave money to her husband to bring some material to eat. He then entered in her room, caught-hold of her, gagged her mouth and threatened her by country-made pistol, made her naked and committed rape on her and bit her breast due to which she shouted after which he threatened her. She got her medical examination conducted.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim is a major married woman. In so far as the bite on the breast is concerned, the doctor conducting medical examination, did not

find any injury on her body at the time of medical examination. It is argued that the said fact is a concoction as there was a dispute with regards to property between the husband of the victim and the applicant which was the reason for his false implication. The husband of the informant has executed first sale deed on 15.11.2021 in consideration of Rs.4,41,000/- and second sale deed dated 21.5.2022 in consideration of Rs.1,04,000/-. It is further argued that the husband of the informant has filed the suit for cancellation of the sale-deed before the competent court on 7.9.2022 and the court concerned has not granted stay order and due to this reason the informant has used his mind and falsely implicated the applicant. While placing supplementary affidavit dated 30.7.2023, in para no.4 it has been argued that the applicant was previously involved in a case in which he has been acquitted by the trial court concerned, the said judgement and order dated 29.9.2016 has been filed as annexure no.S-A-1 to the said supplementary affidavit. The applicant is in jail since 23.5.2023.

6. Per contra learned counsel for the first informant and learned counsel for the State opposed the prayer for bail.

7. After hearing the counsel for the parties and perusing the record, it is evident that the victim is a major married woman. The FIR has been lodged on the basis of application u/s 156(3) Cr.P.C. The allegation of bite on breast of the victim does not corroborate from the medical examination report.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-**Shivcharan**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the

court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 6.11.2023

Gaurav Kuls