

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37627 of 2023

Applicant :- Khurshid Hashami @ K.D

Opposite Party :- State of U.P.

Counsel for Applicant :- Atul Srivastava, Mohd. Farooq

Counsel for Opposite Party :- G.A., Manoj Kumar

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Mohd. Farooq, learned counsel for the applicant, Sri Manoj Kumar, learned counsel for the first informant and Sri Pankaj Kumar, learned AGA 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 Khurshid Hashami @ K.D, seeking enlargement on bail during trial in connection with Case Crime No. 256 of 2023, under Sections 376, 323, 504, 506 I.P.C. and Section 3/5(1) of Prohibition of Unlawful Religious Conversion Act, registered at Police Station Rajghat, District Gorakhpur.

4. The FIR of the matter was lodged on 25.06.2023 by the victim herself under Sections 376, 313, 328, 323, 504, 506 I.P.C. and Section 3/5(1) of Prohibition of Unlawful Religious Conversion Act against the applicant alleging therein that she was married to one Sandeep in the year 2008. In the year 2012 a girl was born from the wedlock. Subsequently her husband was married with some other girl. From 2015 onwards she was living alone in her maternal house. She was used to work in Devi Jagran for her livelihood where she was met the applicant who assisted her in her work. He made a false promise to marry her and established physical relationship with her. She objected to it and stated of first getting married but in year 2016 he gave her some intoxicating substance and established physical relationship and made a video of it. On blackmailing her due to the said video he used to establish physical relationship. He then got her house changed in the meantime he got her religion converted to Islam and got her Nikah done with him. In between she came to know that he is living with some other girl. When she asked him of the same he assaulted her and physically tortured her. On 07.03.2023 he came to her house and established physical relationship with her and threatened to murder her child.

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 her statement under Section 164 Cr.P.C. she has disclosed her age as 32 years. She is living separately from her husband. There was some discussion between the applicant and victim with regards to marriage but the same could not materialize. It is argued that the investigation in the matter concluded and charge sheet submitted against the applicant under Sections 376, 323, 504, 506 IPC whereas the other sections have been deleted. It is argued that in so far as the allegations of conversion of religion of the victim is concerned, the Investigating Officer did not find any such evidence and as such deleted the same from the present case. It is argued that the FIR has been lodged after unexplained delay as the applicant is alleged to have committed rape for the first time in the year 2016 but the FIR has been lodged in the year 2023 which is after about 7 years of the incident. He further argued that the applicant has no criminal history as stated in para 30 of the affidavit and is in jail since 27.07.2023.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the FIR and there are allegations against him.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the victim is a married woman aged about 32 years as stated in her statement under Section 164 Cr.P.C. Some discussion between the applicant and the victim with regards to marriage but could not materialize. The first incident of rape is stated to be in the year 2016 but the First Information Report has been lodged in the year 2023 which after a delay of about 7 years.

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 **Khurshid Hashami @ K.D**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties **(one of the sureties of the applicant will be his family member and the other to be of local person)** 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***.

Order Date :- 14.12.2023

M. ARIF

(Smit Gopal, J.)