

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40905 of 2023

Applicant :- Shardendu Mishra @ Rajan Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Dubey

Counsel for Opposite Party :- G.A.,Chandra Kumar Rai

Hon'ble Ajay Bhanot,J.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 406 of 2023 at Police Station-Shahpur, District- Gorakhpur under Sections 376, 386, 307, 504, 506 IPC. The applicant is in jail since 08.06.2023.

The bail application of the applicant was rejected by the learned trial court on 17.08.2023.

The following arguments made by Shri Rajesh Kumar Dubey, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Chandra Kumar Rai, learned counsel for the informant and Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. Delay in lodgement of the F.I.R. in the facts and circumstances of this case is fatal to the prosecution case.
2. The timing of the incident is not stated in the F.I.R.
3. The victim and the applicant were in a consensual

physical relationship.

4. The F.I.R. is the result of a relationship between the applicant and victim going awry.

5. Medical evidence to corroborate commission of rape by the applicant with the victim has not been produced by the prosecution.

6. The incident allegedly happened at the house of the applicant where other family members were present.

7. There is no sign of forced entry. The victim never raised an alarm.

8. The victim was never confined or bound down in any manner. She did not raise an alarm nor did she resist the applicant. Her conduct shows that she was a consenting party.

9. The victim is habitual of filing false cases against persons under Section 376 I.P.C. for extortion of money. Two more more cases have been brought in the record before this Court.

10. Prosecution evidence does not connect the applicant with the offence.

11. The applicant has explained his criminal history. It is also contended that the applicant has become a soft target and a convenient scapegoat for the police authorities who nominated him in a false case to burnish their professional

credentials. The said case does not have any bearing on the instant bail application.

12. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- **Shardendu Mishra @ Rajan Mishra** 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 17.10.2023

Dhananjai