

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45301 of 2023

Applicant :- Badre Alam

Opposite Party :- State of U.P.

Counsel for Applicant :- Atmaram Nadiwal, Dinesh Kumar Yadav

Counsel for Opposite Party :- G.A., Deeplal Bharti

Hon'ble Ajay Bhanot, J.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.491 of 2023 at Police Station-Kotwali, District- Maharajganj under Sections 376, 323, 504, 506 IPC. The applicant is in jail since 29.08.2023.

The bail application of the applicant was rejected by the learned trial court on 03.10.2023.

The following arguments made by Shri Dinesh Kumar Yadav, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri R. B. Diwakar, learned counsel holding brief of Shri Deeplal Bharti and Shri Shrawan Kumar Dubey, learned AGA 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. As per the prosecution case, the incident occurred at the house of the victim. However, there is no sign of forced

entry.

3. The applicant and the victim were found together in a compromising position at her house by the family members of the latter.

4. Further, the family members of the victim were present in the house when the incident happened but she failed to raise an alarm or alert them.

5. The victim was never confined or bound down in any manner. She did not resist the applicant or did she raise an alarm. Her conduct shows that she was a consenting party.

6. The F.I.R. was lodged only to deflect attention from the conduct of the victim and to extort money from the applicant.

7. The sister-in-law of the victim under Section 161 Cr.P.C. has admitted that the victim and the applicant were often found closeted together in a room.

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

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

10. The applicant does not have any criminal history apart from this case.

11. 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- **Badre Alam** 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 :- 27.10.2023

Ankit.