

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44982 of 2023

Applicant :- Harishankar Rajpoot

Opposite Party :- State of U.P.

Counsel for Applicant :- Om Prakash Chaube

Counsel for Opposite Party :- G.A.,Shalvin

Hon'ble Ajay Bhanot,J.

By means of the the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 222 of 2023 at Police Station-Muskara District-Hamirpur under Sections 354, 376, 323, 504, 506 I.P.C. The applicant is in jail since 08.09.2023.

The bail application of the applicant was rejected by the learned trial court on 10.10.2023.

The following arguments made by Shri Om Prakash Chaubey, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Shalvin, learned counsel for the informant and Shri Paritosh Kumar Malviya, 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.The applicant has been falsely nominated on account of a village rivalry between the parties.

3. No allegation of commission of rape by the applicant with the victim has been made by the latter in her statement under Section 161 Cr.P.C. as well as in the F.I.R.

4. Subsequently, false and aggravated allegations have been made by the victim against the applicant in her statement under Section 164 Cr.P.C. at the behest of her family members only to save the failing prosecution case.

5. Major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and Section 164 Cr.P.C., as well as the recitals in the F.I.R. discredit the prosecution case.

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

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

8. 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.

9. 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- **Harishankar Rajpoot** 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 :- 1.11.2023
Dhananjai