

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45866 of 2023

Applicant :- Om Sharan @ Khubbi

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Upendra Upadhyay, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 257 of 2023, under Sections 354, 376D, 506 IPC, Police Station Jaithara, District Etah during pendency of the trial.
3. FIR of the present case was lodged against applicant and co-accused Shivpal on 03.08.2023 and according to the FIR on 02.08.2023 at about 10.00 PM in the night in the absence of the husband of the informant applicant and co-accused committed rape with her.
4. Learned counsel for the applicant submitted that informant i.e. victim of the case is admittedly major and married lady and the story narrated by her in the FIR and in the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. appears to be improbable and no reliance can be placed on such version.
5. He further submits that actually with regard to payment of Rs. 50,000/- a dispute arose between applicant and informant and only due to this reason applicant has been made accused in the present matter.
6. He further submits that even during investigation Investigating Officer found that there was dispute with regard to payment between applicant and informant and this fact is evident from the parcha no.3 of the case diary, which has been annexed as Annexure-3 to the instant bail application. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 07.08.2023.
7. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that victim is major and married lady

and during investigation Investigating Officer also noted the fact that dispute with regard to some payment was pending between both the sides.

8. I have heard learned counsel for the parties and perused the record of the case.

9. However, in the FIR as well as in both the statements of the victim recorded during investigation there is allegation of rape against the applicant and one another co-accused but victim is major and married lay and story narrated by her does not inspire confidence.

10. Further, applicant has taken a specific defence in paragraph no. 17 of the affidavit that due to the dispute of money, he has been made accused in the present matter and his defence also finds support from the parcha no.3 of the case diary, which has been annexed as Annexure-3 to the affidavit. From its perusal it appears that during investigation Investigating Officer also found that some dispute with regard to money was pending between both sides.

11. Further, applicant is not having any criminal history and in the present matter he is in jail since 07.08.2023.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

14. Let the applicant - **Om Sharan @ Khubbi** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the

prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 31.10.2023

AK Pandey