

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48094 of 2023

Applicant :- Chandra Prakash Shah

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghuvansh Misra, Ashvani Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Shri Alkesh Singh Chauhan, Advocate, has filed his vakalatnama on behalf of informant, which is taken on record.

2. Heard learned counsel for the applicant, learned A.G.A for the State as well as learned counsel for the informant and perused the record.

3. Learned counsel for the applicant submits that the victim herself lodged the present F.I.R. dated 13.08.2023 against her father-in-law (present applicant) and her husband with the allegation that her marriage was solemnized by her father with the co-accused (Dhirendra Shah), and at the time of marriage sufficient amount of dowry was given but her husband and father-in-law were not satisfied with them and they used to make demand of additional dowry in the form of one Bullet motorcycle and ten lakh rupees in cash, and on account of non fulfillment thereof she has been subjected to cruelty and mental agony time to time, one day when she was alone in her matrimonial house her father-in-law (present applicant) made sexual relations with her forcibly and also threatened her that if she told someone about this incident he will kill her and also got her divorced from his son and he also told her to keep and maintain physical relation with him in future, when she told everything about her husband but he did nothing, she also told her sister-in-law about the said incident. Learned counsel for the applicant further submits that in her statement recorded under Section 161 Cr.P.C. the victim has repeated the version of the F.I.R. Learned counsel for the applicant further submits that the victim in her statement recorded under Section 164 Cr.P.C. has repeated the same version of the F.I.R. as well as of her statement recorded under Section 161 Cr.P.C. with some modifications, but he has not mentioned any date regarding the alleged incident in her both statements. Learned counsel for the applicant further submits that medical examination of the victim no injury was found on her body and no spermatozoa was seen in the samples collected from

the victim and doctor has not given any definite opinion about sexual assault of the victim. Learned counsel for the applicant further submits that statements of mother, father and brother of the victim were also recorded who supported the prosecution case. Learned counsel for the applicant further submits that the Investigating Officer also recorded statements of some neighbors of matrimonial house of the victim who in their statements have stated that they have no knowledge about such incident. Learned counsel for the applicant further submits that applicant is the father-in-law of the victim and he has been falsely implicated in the present case by her daughter-in-law which is an off shoot of the matrimonial discord in between the victim and her husband as the victim used to pressurize her husband to reside separately and when her desire could not fulfill she had made false and frivolous allegation of rape against the applicant and allegation of demand of dowry upon her husband. Learned counsel for the applicant further submits that prosecution case also does not support with the medical examination of the victim. He thus submits that no offence against the applicant is made out and the applicant has falsely been implicated in the case. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 14.08.2023, having no criminal history.

4. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant-**Chandra Prakash Shah**, involved in Case Crime No. 274 of 2023, under Section 376, 342, 323, 504, 506, 498-A

I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Ghiror, District Mainpuri, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

7. 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 in accordance with law.

8. The bail application is **allowed**.

Order Date :- 21.11.2023

Mustaqeem.