

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57707 of 2022

Applicant :- Himanshu Sharma

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Sudhir Kumar Agarwal, Ganesh Shankar Dubey

Counsel for Opposite Party :- G.A., Amit Kumar Srivastava

Hon'ble Vivek Varma, J.

1. Case called out. Counsel for the informant is not present. Earlier, also, when the case was taken up on 06.09.2023, the counsel for the informant was not present.

2. Heard counsel for the applicant and learned AGA for the State.

3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 167 of 2022, under Sections 377 & 506 of I.P.C. and Section 5/6 of POCSO Act, Police Station- Kotwali, District- Mathura during pendency of the trial.

4. Counsel for the applicant contends that the applicant has been falsely implicated in the instant case. The incident is alleged to have occurred on 12.03.2022. The first information report was lodged on 24.03.2022. The inordinate delay in lodging the first information report is fatal to the prosecution case. The medical examination of the victim was conducted on 25.03.2022. As per the medical report annexed as Annexure-2 to the bail application, no external injury was seen. The medical report does not support the prosecution version. It is contended that the applicant did not act inappropriately with the victim. The applicant is in jail since 28.03.2022, having no criminal history. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid facts from the record.

6. Having heard learned counsel for the parties and having perused the record this Court prima facie finds that the F.I.R. was lodged belatedly. The medical report does not support the prosecution version. At this stage, there is no substantive evidence against the applicant. Further, the applicant has no criminal antecedents and has remained confined for more than one year and six months and there is no hope of early conclusion of trial, more so when no

reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant, **Himanshu Sharma** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not temper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness; and,
- iii. the applicant shall appear on each and every date fixed by the trial court.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 13.10.2023

Sachin Mishra