

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 739 of 2023

**Applicant :-** Shakir

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home

**Counsel for Applicant :-** Kapil Gupta

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mohd. Faiz Alam Khan,J.**

1. Heard Shri Kapil Gupta, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Shakir** for grant of bail, in Case Crime No. 293 of 2022, under Sections 376, 406, 328, 506 IPC, Police Station Karnail Ganj, District Gonda, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The FIR of this case has been lodged by the prosecutrix/ victim herself on 6.7.2022 with regard to the incident which had allegedly occurred about two months before lodging of the FIR and it is stated therein that the applicant was a tenant in the nearby accommodation of her house and he informed that an exorcist was known to him and she would be treated by him and for that purpose she would have to accompany him and believing on his statement, she had gone with him on 18.05.2022 at 4.00 P.M. and had also taken with her some jewelry and Rs. 32,000/- in cash, however, during the course of journey, some noxious substance was given to her by the applicant in tea whereby she became unconscious and when she gained consciousness, she found herself in the compartment of a train and she was taken to Delhi where she was sexually assaulted and thereafter to Pilibhit from where she was recovered by the police. The prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C., has stated the same story as alleged in the FIR.

4. Highlighting the above fact, it is vehemently submitted that the age of the prosecutrix is about 26 years (as stated by her in statements recorded under Section 164 Cr.P.C.). Admittedly, she was a married lady and it is also admitted by her that she had left her home on 18.5.2022 at about 4.00 P.M. and had also taken with her some jewelry and Rs. 32,000/- cash and had gone with the applicant to Delhi and thereafter to Pilibhit.

5. It is vehemently submitted that the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. and the averments made in the FIR are read conjointly, it would emerge that prosecutrix was a consenting party and she had voluntarily accompanied him and they had gone to Delhi and thereafter to Pilibhit and since the prosecutrix was a consenting party and was a major at the date and time of the incident, no offence has been committed by the applicant.

6. It is vehemently submitted that story of losing consciousness has been carved out subsequently and the FIR could only be lodged when the prosecutrix had returned to her home.

7. It is further submitted that the applicant is in jail in this case since 7.7.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty and the medical report of the prosecutrix is clean and no injury etc. was found therein.

8. Learned A.G.A. on the other hand submits that applicant is accused of committing an heinous offence, therefore he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix as stated by her in her statements recorded under Section 164 Cr.P.C. is about 26 years though she had alleged in the FIR as well as in her statements recorded under Sections 161 and 164 Cr.P.c. with regard to the fact that she was given some noxious substance by the applicant and was taken to Delhi against her wish but various submissions have been raised by learned counsel for the applicant including the fact that the prosecutrix has admitted that she had travelled with the applicant to Delhi

by a public transport and thereafter to Pilibhit and had not raised any alarm, in order to show that she was a consenting party. In the medical examination report of the prosecutrix no abnormality or injury etc. has been found on the person of the victim and the FIR for her alleged elopement with the applicant has also been filed by her when she had returned to her home. The applicant is in jail in this case since 7.7.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions.

10. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

11. Let the applicant- **Shakir** involved in the aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

12. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

13. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

14. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

**Order Date :- 30.11.2023**

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