

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10146 of 2023

Applicant :- Shivkumar

Opposite Party :- The State Of U.P. Thru. Its Prin. Secy. Home Deptt. Lucknow

Counsel for Applicant :- Manoj Kumari Tiwari, Sumit Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit filed by learned counsel for the applicant is taken on record.

2. Heard Shri Sumit Kumar Srivastava, learned counsel for the applicant as well as learned A.G.A. for the State and perused record.

3. The present bail application has been filed by the applicant- **Shivkumar** with a prayer to enlarge him on bail in Case Crime No. 281 of 2023 under Section 376-D, 323, 504 and 506 I.P.C. Police Station Motipur, District Bahraich.

4. Learned counsel for the applicant has submitted that FIR has been lodged by the prosecutrix herself under Section 354, 323, 504, 506 I.P.C. on 24.5.2023 and allegation of outraging modesty has been levelled against applicant Shiva and co-accused Vivek. There is no allegation of rape levelled by the prosecutrix in the FIR. In her statement recorded under Section 161 CrPC she has levelled allegation of rape against the applicant and has further stated that when she raised protest against the act of molestation committed by applicant, she was beaten. Learned counsel for the applicant has invited attention of this Court towards the medical examination conducted on 24.5.2023 and the medical report does not indicate any physical assault and there is also no opinion against regarding commission of sexual offence. The prosecutrix again got herself examined on 29.5.2023, second time and in the second medical report conducted on 29.5.2023, some injuries have been found on the body of the prosecutrix. Learned counsel for the applicant has submitted that this second medical indicates that the prosecutrix procured the medical just to lodge false F.I.R., whereas, first medical report does not indicate any injury sustained on the body of the prosecutrix.

5. Learned Counsel for the applicant has further invited

attention of this Court towards the statement of the prosecutrix recorded under Section 164 CrPC on 2.6.2023 in which the prosecutrix has changed her version and levelled allegation of rape against applicant as well as Vikas. She has stated in her statement recorded under Section 164 CrPC that on the pretext of marriage, physical relation was being established by applicant with her for the last six months. It has been submitted by the learned counsel for the applicant that prosecutrix has changed her story at every step and the statements of prosecutrix are self-contradictory. It has been further submitted that first medical report does not indicate any injury. The statement under Section 164 CrPC and the version of FIR are contradictory to each other. He has further submitted that the applicant has no criminal history and he is in Jail since 01.6.2023.

6. It is further submitted that in the medical examination report of the prosecutrix a new version of the incident has been narrated by her to the doctor, which has not been mentioned either in the F.I.R. or in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., however, in her medical examination report, no internal or external injury has been found and no abnormality of any kind has been noticed, which may suggest commission of sexual assault. The age of the prosecutrix as per the ossification test has been determined as 18 years and, thus, she was major and as she was consenting party, which may be inferred by the statement of the mother of the prosecutrix, no offence has been committed, however, the applicant has always been ready to marry the prosecutrix/victim but now she is not ready to solemnize marriage with him.

7. On the other hand, learned A.G.A. has opposed the prayer for bail and has submitted that the prosecutrix has levelled allegation of rape against the applicant and her mother has also stated in her statement recorded under Section 161 and 164 CrPC that the applicant has committed rape with the prosecutrix. It is further submitted that the second medical report indicates that there are injuries on the body of the prosecutrix, therefore, the bail application is liable to be rejected.

8. Considering the over all facts and circumstances of the case, it is evident that in the F.I.R., no allegations pertaining to commission of rape has been levelled, however, the version of incident has been changed and in the statements of victim recorded under Section 161 and 164 CrPC, she has levelled allegation of rape. Similarly, the first medical examination of prosecutrix was conducted on 24.5.2023, which does not indicate any injury on the body of the prosecutrix, whereas in

her second medical report, some simple injuries have been notified. The statement of the prosecutrix was recorded under Section 164 Cr.P.C. also which further indicates that there has been relationship between the applicant and the prosecutrix. The applicant has stated that he still want to marry the prosecutrix. He is in jail in this case since 01.06.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions/restrictions.

9. Let the applicant, namely, **Shivkumar** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking before the trial Court to the effect that he shall not seek any adjournment on the dates fixed for evidence especially, when the prosecution witnesses would be 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) 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. is issued and the 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 of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

10. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case.

Order Date :- 28.11.2023/Praveen