

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10350 of 2023

Applicant :- Shiv Kumar Sharma

Opposite Party :- State Of U.P. Thru. Prin Secy. Home And 4 Others

Counsel for Applicant :- Brijesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

Heard Shri Brijesh Kumar Tiwari, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant- **Shiv Kumar Sharma** for grant of bail, in Case Crime No.87/2023, under Sections 363, 366, 376 I.P.C. & 3/4 POCSO Act, Police Station- Kotwali Nagar, District- Ayodhya, during trial.

Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

It is further submitted that the prosecutrix at the date and time of the incident was aged about 17 years, 8 months and 5 days, as per her educational credentials and after her recovery, in her statement recorded under Sections 161 and 164 Cr.P.C., she had not imputed any imputations against the applicant, rather it is alleged that she had accompanied the applicant with her free wish and will and they had solemnized marriage and in her statement recorded under Section 164 Cr.P.C., she has specifically stated that no cohabitation had taken place between them and thus, the Investigating Officer has submitted the charge sheet in this case without there being any evidence or material.

It is further submitted that the prosecutrix refused to undergo any medical examination, thus, there is no medical evidence in support of the oral allegations as leveled in the first information report. The applicant is in jail in this case since 23.03.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that

after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

Perusal of the record would reveal that the F.I.R., which has been lodged by the mother of the victim, the applicant was not named therein. However, on the recovery of the prosecutrix, her statements under Sections 161 and 164 Cr.P.C were recorded wherein she has not imputed anything against the applicant and the Investigating Officer appears to have filed the charge sheet on account of minority of the prosecutrix. Admittedly, the prosecutrix keeping in view her date of birth as shown in the educational credential is coming 17 years, 8 months and 5 days on the date and time of the alleged incident. Though, she was not major at the date and time of the alleged incident, but was having sufficient intellect to understand the nature of the act and she was at the verge of majority and she has not imputed any allegation against the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 23.03.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

Having regard to the overall facts and circumstances of the case and 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

Let the accused/applicant- **Shiv Kumar Sharma** involved in above-mentioned case, be released on bail on his 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.

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

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

Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 18.10.2023

Gurpreet Singh