

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10666 of 2023

Applicant :- Shiv Kumar Saroj Alias Shiv Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lucknow And 3 Others

Counsel for Applicant :- Pawan Kumar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. The State along with its counter affidavit has filed a communication sent by the concerned Police Station with regard to service on opposite party no.2, thus the opposite party no.2/ informant is shown to have been sufficiently served, however she is not represented.

2. Heard Shri Pawan Kumar Maurya, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Shiv Kumar Saroj Alias Shiv Kumar** for grant of bail, in Case Crime No. 0208 of 2021, under Sections 147, 148, 323, 504, 506, 427, 452, 376D of IPC and 5g and 6 of POCSO Act, Police Station Kohdaur, District Pratapgarh, U.P., during trial.

4. 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 mother of the victim on 3.9.2021 with the delay of many days pertaining to an incident allegedly occurred on 20.8.2021 at 7.00 A.M. alleging therein that her daughter aged about 17 years had gone towards the river for easing out where she was overpowered by the applicant and co-accused Shiv Bahadur and was dragged into shrubs and she was molested. On an alarm raised by her, her aunty arrived, however, she was also assaulted by the accused persons named in the FIR. The statement of the prosecutrix was recorded under Sections 161 Cr.P.C., however, in her statement recorded under Sections 161 Cr.P.C., there was no allegation of rape but in her statement recorded under Section 164 Cr.P.C. she alleged that applicant had placed his finger in her private part during the course of molestation and also assaulted her and her family members.

5. Highlighted the above facts, it is vehemently submitted that the family of the applicant and informant's family are highly inimical towards each other with regard to the dispute pertaining to an immovable property and earlier also an FIR bearing Case Crime No. 294/2020 under Sections 427, 435, 504 506, 34 IPC was registered against the applicant and his family members at the behest of the informant and prosecutrix and a simple incident of verbal altercation has been given the colour of sexual assault, however the manner in which the sexual assault is shown to have been committed may not be on the touch stone of probability. Moreover no injury etc. to the incident is claimed to have been sustained by the prosecutrix as she refused to undergo any medical examination, thus in support of the allegation of sexual assault it is only and only the untrustworthy statement of the prosecutrix.

6. It is further submitted that the applicant is in jail in this case since 22.5.2023 and criminal history of two cases which were lodged at the behest of the informant's family has been explained in paragraph 15 of the bail application 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. Identically placed co-accused Shiv Bahadur has been granted bail by a Coordinate Bench of this Court, vide order dated 4.4.2023 passed in Crl. Misc. Bail Application No. 1469 of 2023.

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

8. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix is about 17 years and 7 months at the date and time of the incident. The parties are highly inimical towards each other with regard to a dispute pertaining to an immovable property. Attention of this Court has been drawn towards the statements of the prosecutrix recorded under Sections 161 Cr.P.C. as well as the averments made in the FIR in order to show that initially there is no allegations with regard to the commission of rape and when the statement of the prosecutrix was recorded under Section 164 Cr.P.C. after a gap of 9 months, the factum of rape has been introduced. The identically placed co-accused person, namely, Shiv Bahadur has been granted bail by a Coordinate Bench of this Court. Criminal history of the applicant has been explained adequately. The applicant is in jail in this case since 22.05.2023. His presence may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the applicant- **Shiv Kumar Saroj Alias Shiv Kumar** 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.

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

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

13. 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 :- 7.12.2023

Muk