

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10896 of 2023

Applicant :- Nanhe Shukla Alias Mithilesh Kumar Shukla

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Deo Raj Singh

Counsel for Opposite Party :- G.A.,Manoj Kumar Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Despite opportunity given to learned counsel for the opposite party no.2 (complainant), counter affidavit has not been filed yet.
2. Heard Shri Deo Raj Singh, learned counsel for the accused-applicant, Shri Vinay Kumar Singh, Advocate holding brief of Shri Manoj Kumar Singh, learned counsel for the opposite party no.2 (complainant/informant) 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- **Nanhe Shukla Alias Mithilesh Kumar Shukla** for grant of bail, in F.I.R./Case Crime No. 038 of 2023, under Sections 376-D, 420, 406 and 506 I.P.C., Police Station Sujauli, District Bahraich, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the prosecutrix herself, wherein the allegations of committing sexual assault and also deceiving her by taking Rs. 2,50,000/-, which she has collected by selling her tractor has been levelled. The prosecutrix has supported the allegations of the F.I.R. in her statement recorded under Section 161 and 164 Cr.P.C.
5. Highlighting the above facts, it is vehemently submitted that the alleged incident is shown to have occurred on 31.12.2022, while the F.I.R. could only be lodged on 20.03.2023 and no explanation of such a huge delay has been given.
6. It is further submitted that the genesis of the dispute appears to have started, as is admitted to the prosecution, that some money was extorted by the applicant on the pretext of the fact that some treasure is buried within the premises of the

prosecutrix.

7. It is vehemently submitted that Rs. 2,50,000/- is shown to have been given to the applicant after selling the tractor, which was owned by the prosecutrix. It is further submitted that there is nothing on record, which may suggest that at first the prosecutrix was owing any tractor or the same has been sold so much so the name of the person to whom the tractor has been allegedly sold has not been mentioned, therefore, the whole story appears to have been cooked up in order to falsely implicate the applicant. The prosecutrix is aged about 40 years. She is a married lady. She also refused to undergo any medical examination.

8. It is next submitted that applicant is languishing in jail in this case since 23.04.2023 and he is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A. on the other hand submits that the prosecutrix has not only been deceived of Rs. 2,50,000/- but has also been sexually assaulted the prosecutrix, therefore, he is not entitled to be released on bail.

10. Perusal of the record would reveal that age of the prosecutrix is about 40 years. Rs. 2,50,000/- are stated to have been given to the applicant by selling her tractor. It is highlighted that neither any receipt of selling the tractor or even the name of the person to whom the tractor has been sold, has been stated by the prosecutrix/informant. The sexual assault is stated to have been committed in presence of three persons, namely, Chandni Devi and two others, name of whom has not been disclosed by the prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. Applicant is languishing in jail in this case since 23.04.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

11. 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**.

12. Let the accused/applicant- **Nanhe Shukla Alias Mithilesh Kumar Shukla** 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.

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

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

15. 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 on the merits of the case.

Order Date :- 31.10.2023

Praveen