

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12695 of 2022

Applicant :- Shanu Singh Alias Shanu Yadav

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

Counsel for Applicant :- Mohammad Irfan Siddiqui, Dharmendra Pratap Singh, Jitendra Bahadur Singh, Sarvesh Kumar, Satya Narayan Yadav

Counsel for Opposite Party :- G.A., Amar Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Satya Narayan Yadav, learned counsel for the accused/applicant, Shri Pramod Kashyap for opposite party no.2 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- **Shanu Singh Alias Shanu Yadav** for grant of bail, in Case Crime No. 0067/2021, under Sections 323, 504, 506, 376, 498-A IPC and ¾ D.P. Act and 5/6 POCSO Act, Police Station Kakori, District Lucknow, 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 the instant case has been lodged by the prosecutrix/victim on 5.2.2021 at Police Station Kakori, District Lucknow alleging therein that on 17.11.2020 her marriage was solemnized with the applicant in a temple, however, thereafter the family members of the applicant named in the First Information Report started treating her with cruelty in lieu of demand of dowry and started demanding Four Wheeler. She made all attempts to save her marriage but when she lost all her hopes, she came back to her maternal home on 29.1.2021. It is also stated that the husband has also broken her mobile phone.

4. Learned counsel for the applicant highlighting the above facts, submits that it is an admitted case to the prosecutrix that the marriage between them was solemnized with her free wish and will and after lodging of the First Information Report, in the statements of the victim recorded under Section 161 Cr.P.C. as well as of her parents and even in the additional statement of her parents it has been categorically admitted that marriage of the prosecutrix was solemnized with the applicant and thus when the applicant is / was the husband of the prosecutrix, no offence under Section 376 IPC may emerge against the

applicant.

5. It is further submitted that dispute between the parties is basically with regard to the strained matrimonial relations, however, by happening of the severance of relationship of husband and wife the same has been given the colour of sexual assault. Learned counsel for the applicant in order to fortify his submissions has drawn the attention of this Court towards the statement of the prosecutrix/ victim, her parents and many other witnesses in order to show that marriage of the applicant was solemnized with the prosecutrix/ victim/ informant.

6. It is further submitted that date of birth of the victim is shown to be 21.8.2004 and the FIR was lodged on 5.2.2021, so she appears to be minor at the date and time of the incident but since her marriage was solemnized with the applicant, the marriage may be voidable but may not attract any criminal consequences.

7. It is also submitted that the applicant is in jail in this case since 16.5.2022 without any criminal antecedent 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.

8. It is further submitted that though the allegation of causing abortion by administering some medicine is also levelled against the applicant but on a specific query put by the Investigating Officer the prosecutrix/ victim had replied that she is not possessing any documentary evidence of the same, therefore only and only on basis of oral allegation, the story of prosecution may not be believed.

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

10. Shri Pramod Kashyap, learned counsel appearing for opposite party no.2, vehemently opposed the prayer of bail of the applicant by submitting that the prosecutrix in her additional statement recorded by the Investigating Officer has given an elaborate account of the happening of sexual assault by saying that she was working with the applicant and by administering noxious substance, she was sexually assaulted and under the intimidation given by the applicant, she had solemnized marriage. Various other allegations have also been levelled with regard to administering medicine for the purpose of causing abortion and therefore having regard to the evidence/ material collected by the Investigating Officer the applicant is

not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the First Information Report which has been lodged by the prosecutrix herself as well as her statements recorded under Sections 161 and 164 Cr.P.C. (including additional statement) as well as the statements of her parents recorded by the Investigating Officer under Section 161 Cr.P.C. would *prima facie* project that the prosecutrix had solemnized marriage with the applicant. It would also be inferred that the parents of the prosecutrix/ victim had also taken part in the marriage ceremony of their daughter with applicant and to a specific query posed by the Investigating Officer they replied that the marriage of their daughter (prosecutrix) was solemnized with the applicant with their consent and permission and they had also participated therein.

12. Thus, having regard to the above factual matrix there appears force in the submissions made by learned counsel for the applicant that Section 376 IPC and relevant provision of POCSO Act may not attract against the applicant. Allegations of treating the prosecutrix with cruelty in lieu of demand of dowry is subject matter of the trial court which may be adjudicated after providing an opportunity to lead the evidence by the parties. The applicant is in jail in this case since 16.05.2022 and he is not having any criminal antecedent. His presence may be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the applicant- **Shanu Singh Alias Shanu Yadav** 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.

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

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

17. 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 :- 11.10.2023

Muk