

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12003 of 2023

Applicant :- Shamshad

Opposite Party :- State Of U.P. Thru. Prin. Secy. At Home, Lucknow And Another

Counsel for Applicant :- Ashok Kumar Singh, Rahul Kumar Singh

Counsel for Opposite Party :- G.A., Mahesh Gupta

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed on behalf of the opposite party no.2 (complainant) is taken on record.
2. Heard Shri Rahul Kumar Singh, learned counsel for the accused-applicant, Shri Mahesh Gupta, learned counsel appearing for the opposite party no.2 (complainant) 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- **Shamshad** for grant of bail, in Case Crime No. 367 of 2023, under Sections 354, 376, 323, 504 and 506 I.P.C., Police Station Atrauli, District Hardoi, 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 moving an application under Section 156(3) Cr.P.C. under the orders of the Court and the application on the basis of which the first information report has been lodged, has been drafted with the help of a legal professional and the allegations therein have been crafted in order to place the applicant behind the bar for a long time.
5. It is also submitted that in the application moved under Section 156(3) Cr.P.C., though, it is mentioned that application to the concerned Superintendent of Police was moved with regard to the incident, however, no date of moving such application has been shown.
6. Highlighting the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. vis-a-vis the allegations levelled in the first information report, it is submitted that there are material contradictions therein. Elaborating further, it is

submitted that while in the first information report as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C., it is stated that when an alarm raised by her the witnesses, namely, Khalid and Shivram had come on the spot while in her statement recorded under Section 164 Cr.P.C., she stated that when she was returning after commission of the incident the witnesses Khalid and Shivram met her at 'Tiraha'.

7. It is also submitted that the medical examination of the prosecutrix has been done on 11.07.2023 after a long gap of the incident and the same is insignificant, moreover, no abnormality has been found therein. Attention of this Court has been drawn on an F.I.R. lodged by the informant/victim of the instant case on 29.03.2023 bearing Case Crime No. 169 of 2023, Police Station Atrauli, District Hardoi, wherein the occurrence is shown to have occurred on 25.03.2023 and allegations have been levelled that the applicant has assaulted the victim with '*lathi-danda*' and '*fists and kicks*' and when the applicant was not apprehended in that case, the another first information report has been lodged by informant.

8. It is vehemently submitted that the informant and applicant are highly inimical towards each other and it is on account of the same various cases have been registered against the applicant. A copy of the affidavit allegedly given by one of the witness, namely, Mohd. Khalid to S.S.P. Hardoi has also been brought on record in order to show that no such incident, as stated by the prosecutrix has occurred. The age of the prosecutrix is assessed through radio-logical process between 30-35 years, while she has stated her age to be of 31 years. Applicant is languishing in jail in this case since 16.07.2023 and criminal history of two cases has adequately been explained 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., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

10. Shri Mahesh Gupta, learned counsel appearing for the opposite party no.2 (complainant) vehemently opposes the prayer of bail of the applicant on the ground that the facts have not been correctly cited in the bail application and the prosecutrix is not having any relation with the informant of the other F.I.R., namely, Kamar Jahan, moreover, an application under Section 156(3) Cr.P.C. moved by the applicant has been rejected in the Month of August, 2023 and, therefore, the same

has been wrongly shown is pending.

11. It is further submitted that the applicant is a habitual offender and, therefore, he is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted situation that the age of the prosecutrix is between 30-35 years, as assessed by the radio-logical process and admitted by the prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. There appears minor discrepancy in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., which has been highlighted by learned counsel for the applicant. One F.I.R. prior to the instant first information report has been lodged by the victim against the applicant on 29.03.2023, wherein allegations of '*marpeet*' were assigned to the applicant. Thus, the parties prima facie appears to be having strained relations. Applicant is languishing in jail in this case since 16.07.2023. The first information report has been lodged under the orders passed by the Court and it is submitted on behalf of the applicant that when the informant failed to place the applicant behind the bar with regard to his earlier F.I.R., this first information report has been lodged and the contents of the same has been drafted with the aid of a legal professional.

13. Be that as it may, the allegations and counter allegations may only be taken care of by the trial Court during the course of trial. Having regard to the age of the prosecutrix and keeping in view the fact that prima facie strained relations between the parties may be inferred and the medical examination of the prosecutrix was done after two months of the incident, wherein no abnormality has been found, the facility of bail may be extended to the applicant, moreover, when the criminal history of two cases appears to have been adequately explained.

14. 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**.

15. Let the accused/applicant- **Shamshad** 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.

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

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

18. 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 :- 18.10.2023

Praveen