

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12197 of 2023

Applicant :- Naushad

Opposite Party :- State Of U.P Thru. Addil. Chief Secy. Deptt. Home Civil Sectr. Lko.

Counsel for Applicant :- Arti Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned AGA informs that he has procured complete instructions in the matter including upto date case diary and the investigation of the instant case is still pending.
2. Heard 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- **Naushad** for grant of bail, in Case Crime No. 0021/2020, under Sections 498-A, 323, 504, 354, 376 IPC and 3/4 Dowry Prohibition Act, Police Station Mahila Thana, District Sultanpur, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case. He is the brother-in-law (Dewar) of the informant / prosecutrix/ victim who was married to the elder brother of the applicant, however, having regard to the strained matrimonial relation, his brother, namely, Raziullah has pronounced '*Talaq*' to the informant on 16.8.2023 and she (informant) had left her matrimonial house and started living at her maternal house and only on account of the fact that she has been given '*Talaq*' by her husband (real brother of the applicant), the instant FIR has been instituted.
5. It is also further submitted that '*Talaq*' to the informant/prosecutrix was given by the brother of the applicant on the ground that she (informant) had solemnized marriage with Raees Ahmad son of Taufeeq.
6. It is vehemently submitted that allegation of demand of dowry and committing cruelty in lieu thereof has been levelled against the other co-accused persons including the husband (brother of the applicant) and in order to pressurize the brother

of the applicant and his other family members, allegation of sexual assault has been levelled against the applicant which could not be believed.

7. It is also submitted that the FIR of this case has been lodged with a delay of 7 days and no explanation of the same has been given and the prosecutrix was also subjected to medical examination on 24.9.2020 and no abnormality or injury of any kind has been noticed therein and thus there is no medical evidence in support of the oral allegation of sexual assault.

8. The applicant is in jail in this case since 04.09.2023. He is ready to cooperate in the investigation and would remain present before the Investigating Officer as well as the trial court whenever his presence is required. 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.

9. It is further submitted that co-accused persons of the crime, namely, Raziullah, Rafiullah @ Lallan, Kismatulnisha, Khushnoor and Sabnoor have been granted Anticipatory Bail by the trial court vide order dated 3.11.2020 passed in Anticipatory Bail No. 2160 of 2020.

10. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

11. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted case that the applicant is the brother-in-law (Dewar) of the informant. The perusal of the statement of the prosecutrix recorded under Sections 161 and 164 would sufficiently project that the prosecutrix/ informant was having strained matrimonial relations with her-in-laws as allegations have been levelled that she was being subjected to cruelty in lieu of demand of dowry. The allegations of sexual assault has been levelled against the applicant with the further allegation that when the fact of sexual assault was brought in the notice of family members of the applicant including husband of the informant they did not pay any heed. Allegations of physical assault has also been levelled against all the accused persons named in the FIR. The FIR has been lodged after delay of 7 days and the medical examination report of the prosecutrix is not reflecting any physical injury nor any abnormality. The defence of the applicant appears to be that his brother (husband of the prosecutrix/ informant) had pronounced 'Talaq' to her on 16.8.2023 as she had solemnized 2nd marriage with one Raees Ahmad son of Taufeeq and a copy of the 'Talaqnama' has also

been produced as Annexure No.8 to the bail application and it is vehemently submitted on behalf of the applicant that the matrimonial dispute has been given the colour of sexual assault. The applicant is in jail in this case since 04.09.2023 though the Investigating Officer appears to have procured a non-bailable warrant against the applicant during the course of investigation, but it is also reflected that the day on which the non-bailable warrant was obtained, the applicant had surrendered before the trial court.

12. For the reasons mentioned herein before, in the considered opinion of this Court the applicant is made out a case of bail. The bail application moved on behalf of the applicant is, thus, **allowed.**

13. Let the applicant- **Naushad** 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.

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

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

16. 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 :- 12.10.2023

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