

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14560 of 2023

**Applicant :-** Sher Khan

**Opposite Party :-** The State Of U.P. Thru. Prin. Secy. Home, Lko.

**Counsel for Applicant :-** Pramod Kumar 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 charge sheet in this case has already been submitted and the statement of the prosecutrix has also been recorded.

2. Heard Shri Pramod Kumar Shukla, 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- **Sher Khan** for grant of bail, in Case Crime No. 404 of 2023, under Sections 376, 406, 506 IPC, Police Station Dewa, District Barabanki, during trial.

3. 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 by moving an application before the Station House Officer of the concerned Police Station alleging therein that she was enticed away by the applicant and other accused persons and was taken to 'Kaliyar Shareef', where she was sexually assaulted and they were also planning to sell her.

4. It is further submitted that though in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. she has supported the version of the FIR, however, her statement has been recorded before the trial court, where she categorically stated that she was not abducted by the applicant nor she was subjected to rape. She has also disowned her statement recorded under Section 161 Cr.P.C. and pertaining to her statement recorded under section 164 Cr.P.C. before the Magistrate she stated that the same was given by her under the directions of her parents while the applicant had not committed any rape with her.

5. Highlighting the above facts, it is vehemently submitted that

at the date and time of the alleged incident she was aged about 19 years and thus she was major and when she has disowned her statements recorded under Sections 161 and 164 Cr.P.C. and have categorically stated before the trial court that the applicant has neither enticed away nor committed rape, the conviction of the applicant would be a remote possibility. The applicant is in jail in this case since 03.06.2023 and he is not having any criminal history. Charge sheet in this case has already been submitted 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.

6. 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.

7. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix was 19 years as has been assessed through radio logical process. Thus she was major at the date and time of the incident. In the FIR as well as in her statements recorded under Sections 161 and 164 Cr.P.C. she has supported the allegation of sexual assault and also of abduction, however, she was testified before the trial court as P.W.1, she did not make any allegation against the applicant and has stated that she has not given the statement under section 161 Cr. P.C. as recorded by the Investigating officer and her statement recorded under Section 164 Cr.P.C. was recorded while she was under the influence of her family members. There is no abnormality found in medical examination report of the prosecutrix either. The applicant is in jail in this case 03.06.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions.

8. 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**.

9. Let the applicant- **Sher Khan** 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.

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

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

12. 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 :- 11.12.2023**

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