

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14926 of 2023

Applicant :- Omnath Sharma

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home, Lko.

Counsel for Applicant :- Indra Pratap Singh, Saurabh Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.
2. Heard Shri Indra Pratap Singh and Shri Saurabh Mishra, learned counsels 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- **Omnath Sharma** for grant of bail, in Case Crime No. 0527 of 2023, under Sections 323, 427, 506 and 376 I.P.C., Police Station Madiyaon, District Lucknow, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The victim/informant of this case is the sister-in-law (real bhabhi) of the applicant and the F.I.R. of this case has been lodged on account of strained relations of the applicant with his brother (husband of the informant/victim).
5. It is further submitted that in the F.I.R. allegations have been levelled that for the last six months, from before lodging of the F.I.R., the applicant was making forceful sexual relations with the victim/informant against her wish and thereafter started intimidating her of dire consequences and in furtherance of the same has also committed mischief with the water tank installed on the roof of her house.
6. Highlighting the above facts, it is vehemently submitted that the prosecutrix is aged about 40 years. She is having three children of the age of 20 years, 18 years and 16 years and the allegations of commission of rape for such a long time has been levelled while her husband and three children were present in the house. Thus, the story, as has been cooked up by the

prosecutrix is highly improbable and could not be believed and the establishment of sexual relations in this factual scenario could only be possible when the prosecutrix herself is a consenting party and since she was aged about 40 years, no offence in fact has been committed by the applicant.

7. It is also submitted that a simple incident of 'marpeet' has been given the colour of rape and so much so the real brother of the applicant has also been used as a witness in the instant case, which could not be believed having regard to the normal course of events. Applicant is languishing in jail in this case since 08.11.2023 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. The medical reports of the prosecutrix are also clean and no injury or any abnormality has been found therein.

8. Learned A.G.A. on the other hand submits that the prosecutrix has supported the allegation of commission of rape by the applicant in her statements recorded under Section 161 and 164 Cr.P.C.. Thus, having regard to the allegations levelled against the applicant, he is not entitled to be released on bail.

9. Perusal of the record in the background of the submissions advanced by learned counsel for the parties would reveal that the prosecutrix is aged about 40 years. She is the wife of real brother of the applicant. It may also be gathered that the applicant as well as the prosecutrix along with her husband (real brother of applicant) and three children aged about 20 years, 18 years and 16 years were living in the same house. Allegations are to the tune that for the last six months from before lodging of the F.I.R. the applicant was making forceful sexual relations with the prosecutrix/victim. The defence of the applicant appears to be that the story, as narrated by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. as well as in the F.I.R. could not be believed having regard to the normal course of events as making of sexual relations for six months could not be possible in presence of two major children and one minor children of the prosecutrix along with her husband in the house. Applicant is languishing in jail in this case since 08.11.2023 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.

10. 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**.

11. Let the accused/applicant- **Omnath Sharma** 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.

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

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

14. 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 :- 20.12.2023

Praveen