

Court No. - 33

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7038 of 2024

Applicant :- Mohd. Shabbir Alias Mohd. Shabbir Azad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Civil Sectt. Lko

Counsel for Applicant :- Mohd. Amir Khan, Sheelam Devi, Surya Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Shri Surya Prakash, learned counsel for the applicant, Shri Abhishek Kumar, learned counsel for the first informant and Shri Dinesh Kumar Singh, learned A.G.A. for the State and perused the record.

2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 311 of 2023, under Sections-498-A, 323, 506, 354, 376 IPC and 3/4 Dowry Prohibition Act, Police Station-Motiganj, District Gonda, during the pendency of the trial.

3. Contention of learned counsel for the applicant is that there was a matrimonial dispute between the brother of the applicant, Raja Bhaiya and the first informant. When Raja Bhaiya, husband of the first informant has filed an application for restitution of conjugal rights on 21.10.2023 against the first informant only then the FIR in question was lodged by the first informant on 13.11.2023. Though, the allegation of rape was also made against the applicant, who is the Jeth of the first informant but in the medical report dated 18.11.2023, there is no opinion about the rape with the first informant. It is further submitted that in the statement of Doctor, who examined the first informant, he had stated that there is no report regarding commission of rape with the first informant and only on the basis of legal advice, the entire family members of her in-laws was implicated by the first informant. The applicant is a law abiding citizen and he is languishing in jail since 28.05.2024. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

4. Per contra, learned counsel for the first informant as well as learned A.G.A. have opposed the prayer for bail and submitted that

injury report of first informant dated 20.09.2023 shows that there was incident of beating prior to application of the applicant's brother for restitution of conjugal rights. Therefore, the applicant is not entitled to release on bail.

5. Having heard learned counsel for the parties and perused the record, it appears that though in the first information report as well as in the statement of the first informant recorded under Section 164 Cr.P.C, there is allegation of harassment for dowry and also the allegation of rape against the present applicant, who is brother-in-law of the first informant. The medical examination of the first informant as well as the statement of the Doctor does not support the allegation of rape with the first informant. Even otherwise, from perusal of the FIR as well as the statement of the first informant recorded under Section 164 Cr.P.C., it is clear that the contradictory stands were taken by the first informant and from perusal of the record, this fact is also clear that despite repeated attempt on the part of the investigating officer, the first informant kept for pretending to get away from her medical examination and recording the statement under Section 164 Cr.P.C.

6. However, considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view of the nature of the offence and also the fact that there is no eye witness and general nature of the allegation was made against all the accused. Therefore, without expressing any opinion on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- **Mohd. Shabbir Alias Mohd. Shabbir Azad** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a

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

Order Date :- 12.7.2024

RKM