

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12379 of 2022

Applicant :- Hariom Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Shashi Kant Rai

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard Mr. Shashi Kant Rai, learned counsel for the applicant, learned Additional Government Advocate representing the State and perused the record.

2-By means of this application under Section 439 of Cr.P.C., applicant, who is involved in Case Crime No. 661 of 2020, under Section 376/34 IPC, P.S. Anoopshahr, District Bulandshahr seeks enlargement on bail during the pendency of trial.

3-This is the second bail application. The first bail application of the applicant was rejected by this Court vide order dated 13.08.2021 passed in Criminal Misc. Bail Application No. 23073 of 2021 on the ground that victim in her statement under Section 164 Cr.P.C. has made allegation of rape against all the three accused person and in the vagina of the victim a circular wooden piece of 12 cm long and 2.5 cm in circumference was found.

4-The main substratum of argument of learned counsel for the applicant is that the evidence of the victim has been recorded before the trial court on 30.07.2021 as PW-1 in which she has not supported the prosecution case and has been declared hostile. She stated that she had made the allegation of rape in her statement under Section 164 Cr.P.C. at the behest of her husband and police. It is also pointed out that other co-accused namely, Solanki Sharma and Rajesh Sharma have been granted bail by the co-ordinate Bench of this Court vide order dated 25.02.2022 and 26.04.2022 passed in Criminal Misc. Bail Application No. 52622 of 2021 and Criminal Misc. Bail Application No. 36862 of 2021, respectively. The case of the applicant stands on better footing

than that of the aforesaid co-accused. The applicant has no criminal history to his credit and he is languishing in jail since 29.12.2020.

5-Per contra, learned A.G.A. for the State opposed the prayer for bail of the applicant by contending that possibility of winning over of the victim cannot be ruled out, but does not dispute the aforesaid factum of the case as argued on behalf of the applicant.

6-Considering the facts and circumstances of the case as well as keeping in view the nature of the offence, evidence, complicity of the accused as well as considering the fact that the victim in her evidence before the trial court has not supported the prosecution case and that the other co-accused namely Solanki Sharma and Rajesh Sharma have been granted bail by the co-ordinate Bench of this Court, this Court is of the opinion that the applicant has made out a case for bail. Hence, the bail application is hereby **allowed**.

7-Let the applicant-**Hariom Sharma** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions, which are being imposed in the interest of justice:-

(i) That the applicant shall cooperate in the expeditious disposal of the trial and shall regularly attend the court unless inevitable.

(ii) That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.

(iii) That after his release, the applicant shall not involve in any criminal activity.

(iv) The identity, status and residential proof of sureties will be verified by court concerned.

8-In case of breach of any of the conditions mentioned above, court concerned will be at

liberty to cancel the bail and send the applicant to prison.

9-It is clarified that anything said in this order is limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case.

10-Before parting with this case, I would like to observe that nowadays the practice of stating falsehood are being increased and the same is on higher side. On account of allegation of rape against the applicant, the image of the applicant has been tarnished in the society. He was arrested and suffered the ignominy of being involved in most hatred offence of rape. He lost reverence in the society whereas every one has right to live with dignity in the society. On acquittal of the accused on the ground that victim turned hostile, the stigma against him may be washed away to the certain extent but that is not enough. It is well settled that presumption of innocence will have to be balanced with the right of victim and accused as well as above all societal interest for enforcing the rule of law. Neither accused nor victim or any witnesses should be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it theatre of the absurd. Dispensation of justice in a criminal trial is a serious issue and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses /victims to turn hostile as a ground of acquittal. Complainants should also be accountable and should take responsibility on their shoulder.

11-Considering the societal interest, it is high time for the trial court to resort to Section 344 Cr.P.C in appropriate cases. In the present case since the prosecutrix before the trial Court has turned hostile and completely denied the prosecution version, therefore she is not entitled to the benefit of any compensation paid by the Government, which has been collected from the taxpayers of the country.

12-In view of the above trial Court shall consider the issuance of necessary direction against the

alleged prosecutrix/ victim to refund the amount of compensation, if any received by her, in the appropriate head of the treasury account and shall also ensure the compliance of provisions of section 344 Cr.P.C at the appropriate stage, if it deems fit and proper under the facts and circumstances of the case.

13-Office is directed to transmit a copy of this order to the court concerned within a week for compliance.

Order Date :- 31.5.2022

Shafique