

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33910 of 2024

Applicant :- Abhishek Bhardwaj

Opposite Party :- State of U.P.

Counsel for Applicant :- Vishal Pandey

Counsel for Opposite Party :- Arvind Kumar Sahu,G.A.

Hon'ble Sanjay Kumar Singh,J.

Heard learned counsel for the applicant, learned Additional Government Advocate representing the State and learned counsel appearing on behalf of the victim/complainant.

By means of this application under Section 439 of Cr.P.C., applicant Abhishek Bhardwaj, who is involved in Case Crime No. 75 of 2024, under Sections 376(2)N, 342, 452, 406, 504, 506, 323 IPC and Section 67 I.T. Act, police station Visharatganj, district Bareilly seeks enlargement on bail during the pendency of trial.

As per prosecution case, in brief, the victim got a first information report lodged on 31.05.2024 for the offence under Sections 376(2)(n), 342, 452, 506, 504, 323, 406 IPC against the applicant Abhishek Bhardwaj and four other persons, namely, Shashi Bhardwaj, Prince, Shivangi and Naveen alleging inter alia that her marriage was solemnized five years ago. The applicant used to visit her house. In the meantime, the applicant offered a job in his office, where she started working. The applicant told the victim that he would get a government job for her and took gold ornaments worth Rs. 5 lacs and on the pretext of job, on 05.11.2022, he took her to Krishna Residency Hotel and forcibly committed rape with her. On making resistance by the victim, he promised to marry her. Thereafter, on the pretext of job, he took her to the hotel at Lucknow many a times and

committed misdeed with her there. He also committed misdeed with her at his office situated at Kargaina. On asking of the applicant, the victim started living at her parental house. The applicant also physically abused her at his Visharatganj office. Thereafter on 08.04.2024, the victim went to the house of the applicant to get her ornaments back where Shashi Bhardwaj, Prince, Shivangi and Naveen made her hostage, beaten her and asked her to forget the ornaments otherwise they will kill her. When she made complaint to Senior Superintendent of police, the police of concerned police station is mounting pressure for compromise.

It is argued by learned counsel for the applicant that the victim is a married lady. As per the prosecution case itself, her marriage was solemnized five years ago and the applicant is known to her since long and he used to visit the house of the victim. Much emphasis has been given by contending that despite being married, victim was having extramarital affair with the applicant and it is not a case of rape but a case of consensual relation between the parties concerned. In order to support his submission, learned counsel for the applicant also pointed out various chats between the victim and the applicant to show that the victim was voluntarily and deeply concerned and inclined towards the applicant. It is further submitted that when husband of the victim and other family members came to know about the relation of the victim with the applicant, then victim in order to save her skin got the first information report lodged after a delay of one and a half year on the false and concocted stories. It is also submitted that since victim is already a married woman, therefore, there was no question on the part of the applicant to make promise for marriage with the victim. So far as allegation of making the photographs of the victim viral is concerned, it is argued that there is no obscenity in the said photographs. The applicant does not have any criminal history to his credit. Lastly, it is submitted by learned counsel for the applicant that there is no chance of the applicant fleeing away from the judicial process or tampering with the prosecution evidence.

The applicant is languishing in jail since 05.08.2024 and in case, the applicant is released on bail, he will not misuse the liberty of bail and cooperate with the trial.

Per contra, learned A.G.A. for the State as well as learned counsel for the victim/complainant opposed the prayer for bail of the applicant by contending that the victim and the applicant both were class-fellow and the applicant used to come to the house of the victim and gradually their acquaintance and meeting turned into intimacy towards each other, which culminated into love affair. The applicant taking the benefit of innocence of the victim, sexually exploited her. On the proposal of the applicant, victim started working in the office of the applicant and thereafter on the pretext of providing government job, the applicant made physical relation with her and on making resistance, he promised to marry her. Thereafter, the applicant took her to Lucknow on number of occasions and committed misdeed in a hotel. Thereafter, she was again sexually abused in the office of Visharatganj. On 27.05.2024, when the applicant alongwith co-accused persons barged into her house and started mounting pressure for compromise then she lodged the first information report. It is also submitted that the applicant also made the photographs of the victim viral and extended threat to the victim and her counsel, regarding which they made complaint.

Having heard learned counsel for the parties and examined the matter in its entirety, I find that it is not in dispute that the victim is a married lady and even after her marriage, she has maintained her extramarital affair with the applicant whereas she was capable to understand the significance and morality associated with the act, for which she was consenting to. She was also conscious of the fact that her marriage may not take place owing to various considerations and issues surrounding her marriage. As per own case of the victim, she made physical relation with the applicant number of times. If victim was not consenting, she could complained just after first and second incident but she did not do

so, rather she allowed herself to be sexually misused by the applicant giving consent of the same and at the insistence of the applicant, she leaving her matrimonial home went to her parental home and started living there. Record shows that the victim had inclination towards the applicant and had willingly gone with him. Prosecutrix agrees to have sexual intercourse on account of her love and passion for the applicant. No doubt in the matter of rape, the statement of the prosecutrix should be given primary consideration, but at the same time, it should also be kept in mind that nowadays there can be no presumption that in all the matters, prosecutrix would always tell the entire story truthfully.

Considering the facts and circumstances of the case as well as keeping in view the nature of the offence, evidence, complicity of the accused, submissions of learned counsel for the parties, this Court is of the opinion that the applicant has made out a case for bail. Hence, the bail application is hereby **allowed**.

Let the applicant **Abhishek Bhardwaj** 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.

In case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail.

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. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

Order Date :- 8.1.2025
Shubham