

**Court No. - 76**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 34759 of 2016

**Applicant :-** Mukesh

**Opposite Party :-** State Of U.P.

**Counsel for Applicant :-** Ved Prakash Pandey, Alok Sharma, Om Narayan Pandey, Pawankumar Dubey

**Counsel for Opposite Party :-** G.A., Amit Kumar Shukla

**Hon'ble Krishna Pratap Singh, J.**

Heard Mr. Pawan Kumar Dubey, learned counsel for the applicant, Mr. Amit Kumar Shukla, learned counsel for the complainant and Mr. Ram Awadh Maurya, learned Additional Government Advocate for the State.

By means of this application, the applicant-Mukesh, who is involved in Case Crime No. 429 of 2016, under sections 354, 376 and 506 IPC, Police Station Khudaganj, District Shahjahanpur, is seeking enlargement on bail during the trial.

According to the prosecution version, on 20.10.2015 when victim was returning from the market at about 6.30 p.m. applicant caught hold of her and stuffed cloth into her mouth, took her towards Hari Ram School and after getting her down, committed rape on her forcibly.

It is submitted by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case with some ulterior motive. It is further submitted that applicant has solemnized his marriage with victim and a suit under section 9 of the Hindu Marriage Act is pending in the Family Court, which is numbered and registered as Case No. 22 of 2015. It is also submitted that without obtaining divorce decree, the victim has solemnized her second marriage with one Rahul and Rahul has also filed a case against the victim in Family Court. It is next submitted by the learned counsel for the applicant that there is inordinate delay in lodging FIR and prosecution has not given any plausible explanation about delay. There is no medical examination report on record. It is lastly contended by the learned counsel for the applicant that the applicant has been in jail since 16.5.2016 and in case he is released on bail, he will not misuse the liberty of bail and cooperate with the trial.

Learned counsel for the informant and learned Additional Government Advocate submitted that applicant has committed a heinous crime and destroyed the life and future of the victim. It is further submitted that applicant was a married person prior to

the present occurrence and has two children. Learned counsel further contended that victim was never married to the applicant. It is next submitted that the suit under section 9 of the Hindu Marriage Act, filed by the applicant has been dismissed on 19.10.2016 by the learned Family Court. It is next submitted that victim was running a beauty parlour. and the applicant had taken her photographs on mobile and threatened to denigrate her and in the meantime marriage of the victim was settled with Rahul on 27.11.2015 and when the applicant came to know about settlement of marriage of the victim, he has forcibly committed rape on her. It is further submitted that victim had made a complaint to her mother, but due to fear of denigration and break up of settled marriage, the FIR was not lodged at that time, but just after the marriage of victim, when applicant filed a suit under section 9 of the Hindu Marriage Act on the basis of false and fabricated facts and forged documents of marriage, victim lodged the present FIR on the basis of an application under Section 156(3) Cr.P.C. Therefore, the delay in lodging the FIR is fully explained and delay in lodging such case is not fatal. Learned counsel for the informant has drawn the attention of the Court to the statements of the victim recorded under sections 161 and 164 Cr.P.P., from the perusal thereof, it reveals that applicant has committed rape on the victim. It is also submitted by the learned counsel for the informant that whether rape has occurred or not is legal conclusion and not medical one. It was also submitted that absence of medical report may not itself discredit the statement of victim. Lastly, it is submitted that rape is not only a crime against the person of woman, it is a crime against entire society, which leaves behind a traumatic experience.

Having considered the submissions of the parties, nature and gravity of the accusation, severity of the punishment and the manner in which it was committed, I am not inclined to release the applicants on bail.

Therefore, prayer for bail of the applicant stands rejected.

It is clarified that the observations, if any, made in this order are strictly confined to disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

**Order Date :- 30.4.2019**  
Sazia