

Ashish ShakyA. Vs. State of U.P.

Ashish ShakyA. Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/912067

Court : Karnataka

Decided On : Jul-03-2010

Judge : Arvind Kumar Tripathi,J.

Acts : Indian Penal Code,(IPC) 1860, Sections 376, 452, 506 ;

Appeal No. : CRIMINAL MISC. BAIL APPLICATION No. - 19445 of 2009.

Appellant : Ashish ShakyA.

Respondent : State of U.P.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Akhilesh Singh, Adv.

Judgement :

1. The first bail application was rejected on 7.11.2008 by Hon. S. S. Chauhan, J. The notice was served on the 2nd bail application No.6132 dated 19.2.2009 on the same day to office of Government and on 5.3.2009 the order was passed to list with previous paper in the next cause list before the appropriate Bench. Thereafter, another 2nd bail application No.19445 of 2009 dated 13.7.2009 was filed in which on the same day notice was given to the office of Government. On that application on 28.7.2009 the order was passed to list before the appropriate Bench with previous paper.

2. List revised. No one is present on behalf of applicant to press this second bail application.

3. Both the bail applications are being heard and decided by common order.

4. In the 2nd bail application, which was filed in February, 2009 the affidavit was sworn by one Sunil Kumar brother-in-law of the applicant and again 2nd bail application was filed in the month of July, 2009, the affidavit was sworn by one Ved Prakash Shakya father of applicant without disclosing the filing of the 2nd bail application filed earlier in the month of February, 2009. The case of the prosecution is that on 17.5.2008 when prosecutrix Ashmina was alone in the house applicant entered into house and on point of gun threatened her and committed rape. After hearing her cry when the persons reached, the applicant was caught hold on the spot and he was locked in the same house. Subsequently, the family members reached on the spot. Applicant get the accused forcibly rescued from the house. Defence version of the application is that he was falsely implicated in the present case due to village rivalry.

5. Heard learned AGA and perused the record. The criminal misc. bail application No.19445 of 2009 and 6132 of 2009, have been filed with the prayer to enlarge the applicant on bail in Case Crime No.285 of 2008, under Sections 376, 452, 506 IPC, P.S. Ghiror, District Mainpuri.

6. Learned AGA submitted that applicant was apprehended on the spot he was detained in the room, however, family members and other persons reached there armed with deadly weapons and they rescued the applicant, who has committed rape with victim, who was aged about 14 years. According to medical report, opinion of the doctor was that she was aged about 16 years.

7. It is also clear that two bail application has been filed without disclosing the filing of earlier application. Subsequently application filed in the month of July, 2009.

8. In view of the fact and according to statement of prosecutrix applicant committed rape on point of country-made pistol and threatened her hence she was not consenting party. Apart from that conduct of the applicant was that when he

was detained by the witnesses and some persons reached on the spot then he succeeded to run away with the assistance of his family members and other supporters. In view of aforesaid facts, without expressing any opinion on merit, it is not a fit case for bail. Accordingly, both applications for bail are hereby rejected. However, the trial court is expected to conclude the trial as expeditiously as possible without unreasonable delay and unnecessary adjournment.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com