

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41027 of 2023

Applicant :- Sahbaj

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anurag Yadav, Advocate, holding brief of Mr. Anil Kumar Mishra, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Sahbaj seeking his enlargement on bail in Case Crime No. 149 of 2023, under Sections 376, 504, 506 IPC, Police Station-Janakpuri, District-Saharanpur during the pendency of trial.

4. Record shows that an FIR dated 24.06.2023 was lodged by first informant-Mohseen (brother of the prosecutrix) and was registered as Case Crime No. 149 of 2023, under Sections 376, 504, 506 IPC, Police Station-Janakpuri, District-Saharanpur. In the aforesaid FIR, applicant-Shahbaj has been nominated as solitary named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused-Shahbaj (i.e. applicant herein) by extending a false promise of marriage, repeatedly and continuously dislodged the modesty of the prosecutrix for a period of 2 years. Ultimately, the applicant is alleged to have been resiled from the promise of marriage so extended in favour of the prosecutrix.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 19 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR. Thereafter, the prosecutrix was requested for her internal medical examination which was refused by her. Ultimately, the statement of the

prosecutrix was recorded under Section 164 Cr.P.C. wherein the prosecutrix has rejoined her previous statement under Section 161 Cr.P.C. with better particulars and details. On the basis of above and other material collected by the Investigating Officer during the course of investigation he came to the conclusion that complicity of applicant is fully established in the crime in question. Accordingly, he submitted the charge sheet 28.07.2023 whereby applicant has been charge sheeted under Sections 376, 504, 506 IPC.

8. Learned counsel for applicant submits that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. With reference to the material on record, he contends that prosecutrix is admittedly major. She is a willing and consenting party. The parties were in consensual relationship for a period of 2 years. The allegation made in the FIR that false promise of marriage was extended by applicant is false and concocted. The same has been made only to give colour to the FIR. On the above premise, he, therefore, submits that no offence as alleged can be said to have been committed by the applicant.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 05.07.2023. As such, he has undergone almost 4 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he, therefore, contends that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Attention of Court was then invited to the following judgments of Supreme Court **(i). Sonu alias Subhash Kumar Vs. State of U.P., 2021 SCC OnLine SC 181, (ii). Pramod Suryabhan Pawar Vs. State of Maharashtra, 2019 SCC OnLine SC 1073, (iii). Maheshwar Tigga Vs. State of Jharkhand (2020) 10 SCC 108, (iv). Mandar Deepak Pawar Vs. State of Maharashtra and Another, 2022 Live Law (SC) 649 & (v). Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC OnLine SC 89.** On the basis of above, it is urged by the learned A.G.A. that

the prosecutrix in her statements under Sections 161/164 Cr.P.C. has clearly and categorically stated that physical relations were maintained between the parties on account of promise of marriage extended by the applicant. Up to this stage, no such material has been brought on record to dislodge the said averments occurring in the statements of the prosecutrix referred to above. According to the learned A.G.A., the issue as to whether, false promise of marriage was made or not, is a issue of fact, it can be effectively adjudicated upon only during the course of trial. The prosecutrix is a young girl aged about 25 years whose modesty has been repeatedly and continuously dislodged for almost 2 years by the applicant. On the above premise, the learned A.G.A. submits that no sympathy be shown by this Court in favour of applicant.

11. When confronted with above, the learned counsel for applicant could not overcome the same.

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that the prosecutrix in her statements under Sections 161/164 Cr.P.C. has supported the FIR, the prosecutrix has categorically stated that she was in consensual relationship with the applicant for the last 2 years on account of the promise of marriage extended by the applicant, the applicant has admittedly resiled from the promise alleged to have made by him to the prosecutrix, up to this stage, no such material has been brought on record to dislodge the statements of the prosecutrix referred to above, there is nothing on record to infer false or malicious prosecution of the applicant, the prosecutrix is a young girl aged about 25 years, whose modesty has been dislodged repeatedly and continuously, therefore, irrespective of the varied submission urged by the learned counsel for applicant in support of the present application for bail, but withough making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

13. As a result, present application for bail fails and is liable to be rejected.

14. It is accordingly **rejected**.

Order Date :- 3.11.2023

Vinay