

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45272 of 2023

Applicant :- Brij Mohan Upadhyay

Opposite Party :- State of U.P.

Counsel for Applicant :- Mrityunjay Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Mrityunjay Dwivedi, the learned counsel for applicant and the learned A.G.A..

This application for bail has been filed by applicant Brij Mohan Upadhyay seeking his enlargement on bail in Case Crime No.161 of 2023, under Sections 376, 506, 420, 504 IPC, police station Chandaus, district Aligarh, during the pendency of trial.

Perused the record.

Record shows that the prosecutrix/first informant lodged a first information report dated 22.06.2023 which was registered as Case Crime No.0161 of 2023, under Sections 376, 506 IPC, police station Chandaus, district Aligarh. In the aforesaid F.I.R., seven persons, namely, Brij Mohan Upadhyay (applicant herein); Jitendra Upadhyay; Sandeep Upadhyay; Kishan Upadhyay; Hemant Upadhyay; Anil Upadhyay and Rakesh Upadhyay have been nominated as named accused.

It is apposite to mention here that the said first information report came to be registered pursuant to an order passed by the concerned Magistrate on an application filed by the prosecutrix/first informant under Section 156 (3) CrPC.

The gravamen of the allegations made in the first information report is to the effect that named accused Brij Mohan Upadhyay by extending false promise of marriage to the prosecutrix repeatedly dislodged her modesty and further took money which the prosecutrix received towards pay and other emoluments.

After aforementioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The statement of the prosecutrix was recorded under Section 161 CrPC, which is on record at page 26 of the paper book. The prosecutrix in her aforesaid statement has clearly and categorically stated that she was in relationship with the

applicant for the last four years on account of the fact that applicant had extended promise of marriage. However, the applicant has ultimately refused to solemnize marriage with the prosecutrix. Thereafter, the prosecutrix was requested for her internal medical examination but the same was refused by her. Ultimately, the statement of the prosecutrix was recorded under Section 164 CrPC, which is on record at page 34 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 CrPC. Investigating Officer on the basis of above and other material collected by him during the course of investigation came to the conclusion that complicity of applicant is fully established in the crime in question. He, accordingly, submitted the charge-sheet dated 25.08.2023 whereby applicant has been charge-sheeted under Sections 376, 506, 420, 504 IPC.

Learned counsel for the applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. Admittedly, the prosecutrix is major. The prosecutrix is a willing and consenting party inasmuch as she was in consensual relationship with the applicant. On the above premise, it is thus urged that no offence as complained of can be said to have been committed by the applicant. It is then contended that allegation made in the first information report that applicant had extended false promise of marriage to the prosecutrix is factually incorrect, concocted and has been engineered for the purpose of false prosecution of the applicant.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 24.08.2023. As such, he has undergone more than one and half month of incarceration. The police report in terms of Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged by the learned counsel for applicant 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 investigation/trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this court. The prosecutrix in her statements recorded under Section 161/164 CrPC has remained clear, categorical and consistent. It is the consistent case of the prosecutrix that applicant repeatedly and

continuously dislodged her modesty by extending false promise of marriage. However the applicant has ultimately resiled from said promise. Learned A.G.A. has then invited the attention of Court to the following judgements of Supreme Court in **Pramod Suryabhan Pawar Vs. State of Maharashtra 2019 SCC OnLine SC 1073; Maheshwar Tigga Vs. State of Jharkhand (2020) 10 SCC 108; Sonu alias Subhash Kumar Vs. State of U.P. 2021 SCC OnLine SC 181; Mandar Deepak Pawar Vs. The State of Maharashtra and Another 2022 LiveLaw (SC) 649 and Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC OnLine SC 89**. On the above premise, he contends that since applicant is guilty of repeatedly and continuously dislodging the modesty of the prosecutrix, who is a young girl aged about 21 years, on the false promise of marriage as applicant has ultimately refused to solemnize marriage with the prosecutrix therefore, no sympathy be shown by this Court in favour of applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made, coupled with the fact that the prosecutrix is a young girl aged about 21 years, who is only class-X passed, the prosecutrix in her statements recorded under Section 161/164 CrPC has remained clear, categorical and consistent, the prosecutrix has categorically stated that applicant by extending false promise of marriage continuously and repeatedly dislodged her modesty but has subsequently resiled from the promise so made, the issue as to whether false promise of marriage was extended by the applicant or not is a question of fact which can very appropriately be decided during the course of trial, prima facie the prosecution of the applicant under the charging sections can be maintained even in the absence of medical evidence and on the basis of statements of the prosecutrix referred to above by virtue of law laid down by the Supreme Court in **Phool Singh Vs.State of M.P. (2022) 2 SCC 74**, therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

This application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 27.10.2023.
Rks.