

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47289 of 2023

Applicant :- Devbratraghuvanshi

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushmita Mukherjee

Counsel for Opposite Party :- G.A.,Prashant Sharma

Hon'ble Sameer Jain,J.

1. Heard Sri Arun Adlakha with Ms. Sushmita Mukherjee, learned counsels for the applicant, Sri Kuldeep Jauhari and Sri Prashant Sharma, learned counsels for the informant and Dr.S.B.Maurya, learned AGA-I, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.0286 of 2023, under Sections 376, 377, 506 and 120-B IPC, Police Station Phase III, District Central Commissionerate, Gautam Buddh Nagar, District Gautam Buddh Nagar during pendency of the trial.

3. FIR of the present case was lodged against the applicant, his sister, uncle and other family members on 14.8.2023 and according to the FIR through Jeevan Saathi Portal informant came in contact with applicant for her marriage and thereafter applicant called her in his home on 2.7.2021 and he committed rape with her and thereafter he informed the informant that his uncle refused to accept her marriage proposal with the applicant and thereafter when informant again tried to settle her marriage with applicant then on 16.8.2021 applicant has taken her to the flat of his friend and again made physical relationship against her wishes.

4. It is further mentioned in the FIR that after that number of times physical relationship were developed between applicant and informant as applicant assured the informant to perform marriage with her but subsequently applicant refused to perform marriage with the informant and, therefore, he sexually exploited her under the false promise of marriage.

5. Learned counsel for the applicant submits that entire allegation of sexual exploitation made against the applicant is totally false and baseless and admittedly the informant, i.e., victim of the case is major lady aged about 32 years and from the FIR as well as from her statement recorded during investigation under Section 161 Cr.P.C. her consent is quite apparent. However, he further submits, the statement of victim recorded under Section 164 Cr.P.C. could not be available to the applicant, therefore, the same could not be appended along with the instant bail application.

6. He further submits that actually applicant and victim, i.e., informant of the case were in relationship for almost three years and several times applicant insisted her to perform marriage with him but she told him that she will perform marriage after clearing the examination for the post of SDM and actually informant is the person who seduced the applicant to make relationship with her and ultimately after waiting of more than three years when victim, i.e., informant of the case was not ready for marriage then their relationship has come to an end.

7. He further submits that after end of relationship FIR of the present case was lodged totally on the basis of false allegation of sexual exploitation and rape.

8. He further submits that even as per prosecutrix the first time rape was committed by applicant on 2.7.2021 but in spite of that

she at that time did not make any complaint to any one and FIR of the present case was lodged only 14.8.2023, i.e., after more than two years.

9. He further submits that during investigation applicant along with other accused persons approached this Court in criminal writ jurisdiction vide Criminal Misc.Writ Petition No.15921 of 2023 for quashing of the FIR of the present case and Division Bench of this Court on 11.10.2023 was pleased to stay the arrest of applicant till submission of report under Section 173(2) Cr.P.C. but unfortunately during pendency of the writ petition filed by applicant, he was arrested on 7.10.2023, i.e., four days before to the order dated 11.10.2023 passed by Division Bench of this Court.

10. He further submits that applicant is not having any previous criminal antecedents to his credit and in the present matter he is in jail since 7.10.2023.

11. He further submits that considering the age of the informant and consensual relationship of applicant and informant and the order dated 11.10.2023 passed by this Court in criminal writ, applicant should be enlarged on bail.

12. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that law is by far now settled that identity of the victim should not be disclosed in the application filed by applicant but in paragraph-5 to the affidavit filed in support of the instant bail application, applicant disclosed the name of the informant, i.e., victim of the case, and further, at page-46 of the paper book he also enclosed the chat between him and the victim and in that chat the name of the victim has also been disclosed, therefore, it would be proper if

after withdrawing the instant bail application, applicant should file a fresh and proper bail application.

13. They further submitted that that applicant was arrested on 7.10.2023 and investigation of the case is still pending and it is case of rape and unnatural sexual offence relates to Sections 376 and 377 IPC and, therefore, it would not be proper to release the applicant even without completion of investigation.

14. They further submitted that on merit, informant i.e., victim of the case categorically stated in the FIR as well as in her both the statements recorded during investigation that applicant seduced her under the false promise of marriage and her consent was obtained by playing fraud, therefore, at this stage prima facie it appears that applicant committed offences under Sections 376 and 377 IPC and, therefore, the instant bail application filed on behalf of the applicant should be dismissed.

15. I have heard learned counsel for the parties and perused the record of the case.

16. Two technical objections have been raised by the informant's counsel: First is that applicant in the instant bail application disclosed the identity of the victim which is not permissible.

17. From the perusal of the paper book of the instant matter it appears that applicant has annexed the entire document which is available on record including the FIR and even the statement of the victim recorded under Section 161 Cr.P.C. and in all these documents which are part of the case diary, the identity of the victim has been disclosed and, therefore, in my considered view, merely by annexing the FIR and chat and other documents available on record it cannot be said that applicant disclosed the identity of the victim.

18. As far as the contention raised by learned counsel for the informant with regard to paragraph-5 to the affidavit filed in support of the present bail application is concerned, from its perusal it appears that in paragraph-5 to the affidavit filed in support of the present bail application just after first informant her name has been mentioned. Although as per dictum of the Apex Court it should not be disclosed but on query learned counsel for the applicant submits that unknowingly and casually the name of victim has been disclosed in this paragraph and except this in the entire bail application, the identity of the victim has not been disclosed and, therefore, applicant was not having any intention to defame the victim or to disclose her identity and as she was the first informant of the case, therefore, unknowingly without any intention in routine manner after the words first informant the name of the first informant i.e. victim has been mentioned in paragraph-5 to the affidavit filed in support of the present bail application.

19. I find force in the submission advanced by the learned counsel for the applicant and from the perusal of paragraph-5 to the affidavit it appears that without any intention casually in routine manner after the words first informant the name of informant i.e. the victim has been disclosed and except paragraph-5 of the affidavit the name of the victim has not been disclosed in the entire bail application which run up to paragraphs-47 and, therefore, I am not inclined to dismiss the instant bail application as not maintainable on this ground alone.

20. Further, the another technical objection raised by the learned counsel for the informant is that investigation of the case is still pending and, therefore, in cases of rape it is not proper to release the accused/applicant on bail.

21. From the record of the case it reflects that FIR of the present case was lodged by the victim and thereafter during investigation her both the statements under Sections 161 and 164 Cr.P.C. have already been recorded and she is the principal and star witness of the prosecution and is major and mature lady and her allegations are the base of the prosecution case, therefore, in my view, it would be not proper to decline the hearing of the instant bail application under the pretext that investigation is still pending.

22. The denial of the hearing of the bail application during investigation in such cases like present one will amount to curtailment of the personal liberty of an individual which is most cherished fundamental right provided under Article 21 of the Constitution of India.

23. On merit, the FIR of the present case was lodged after two years from the first alleged rape and further, during investigation when applicant challenged the FIR of the present case in criminal writ before this Court then this Court although was pleased to stay the arrest of applicant till the submission of report under Section 173(2) Cr.P.C. but unfortunately before passing the order during the pendency of the writ petition he was arrested.

24. Further, admittedly the victim, i.e., informant of the case is major and mature lady aged about 32 years and she is in the profession of on-line teaching and from the FIR and her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. (produced by learned AGA) it reflects that physical relationship were developed with her consent. Whether her consent was obtained by playing fraud under the false promise of marriage this can only be ascertained by trial court during trial. No finding in this regard can be recorded by this Court at this stage.

25. Law is settled that bail application should not be dismissed either for punitive or preventive purposes.

26. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

27. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

28. Let the applicant-**Devbrat Raghuvanshi** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

(iv) The applicant shall not circulate any material available on record in which relation of applicant and victim is reflected.

29. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

30. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 9.11.2023
SKM