

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48920 of 2023

Applicant :- Amit Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunita Chauhan, Amitesh Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mrs. Sunita Chauhan, 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-Amit Yadav seeking his enlargement on bail in Case Crime No. 353 of 2018, under Sections 376, 506 IPC, Police Station-Nizamabad, District-Azamgarh during the pendency of trial.

4. Record shows that an FIR dated 09.08.2023 was lodged by first informant/prosecutrix-Sanjana and was registered as Case Crime No. 353 of 2018, under Sections 376, 506 IPC, Police Station-Nizamabad, District-Azamgarh. In the aforesaid FIR, applicant-Amit Yadav has been nominated as solitary named accused.

6. Gravamen of the allegations made in FIR is to the effect that the prosecutrix and applicant were in acquaintance with each other for about one year. Applicant is alleged to have extended false promise of marriage and on the basis of promise so extended, he is alleged to have dislodged the modesty of the prosecutrix repeatedly and continuously. Ultimately, the applicant is alleged to have resiled from the promise so extended to the prosecutrix.

7. It is apposite to mention here that in the day, date and time column of the FIR, no particulars have mentioned. Similarly in the body of the FIR, the date of the occurrence/occurrences has not been mentioned.

8. 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. Same is on record at page 17 of the paper book. The prosecutrix in her aforesaid statement has stated that she is aged about 21 years and has studied up to Class-12. The prosecutrix has further reiterated the allegations made in the FIR with the improvement that though applicant is ready to solemnize marriage but his family members are against the same. Subsequent to above, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has supported the FIR by rejoining her statement under Section 161 Cr.P.C. The Doctor, who medically examined the prosecutrix, did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. However, with regard to the private part of the prosecutrix, the Doctor has opined as follows:-

"Hymen - Old hymen and torned"

9. Certain samples were collected from the body of prosecutrix for pathological examination. However, the copy of the supplementary medico legal examination report of the prosecutrix has not brought on record. 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. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 19.09.2023 whereby applicant has been charge sheeted under Sections 376, 506 IPC.

10. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. The prosecutrix is otherwise major inasmuch as, her date of birth recorded in the mark sheet of High School Examination undertaken by the prosecutrix is 08.02.2002. The FIR giving rise to present criminal proceedings was lodged on 09.08.2023. As such, the prosecutrix was more than 20 years of age on the date of lodging of the FIR. It is then contended that as per the statements of the prosecutrix under Sections 161 and 164 Cr.P.C., she is a consenting party. As such, it cannot be said that applicant is guilty of deliberately or forcibly dislodging the modesty of the prosecutrix. Consequently, no offence under Section 376 IPC can be said to have been committed by the applicant. Applicant has not disclosed anything false to the prosecutrix at the beginning of the relationship. As such, it cannot

be said that applicant is guilty of extending false promise of marriage. In case, the promise has not been honoured then in such a circumstance, the criminality, if any, committed by the applicant shall fall in the category of breach of promise and not false promise of marriage. As such, applicant is liable to be enlarged on bail.

11. 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 22.08.2023. As such, he has undergone more than 3 and 1/2 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 on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits 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.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The prosecutrix is a young girl of tender age as she was below 21 years of age on the date of lodging of FIR. The applicant has dislodged the modesty of the prosecutrix repeatedly and continuously on the false promise of marriage extended by him. Ultimately, the applicant has resiled from the said promise. However, irrespective of above, the modesty of the prosecutrix cannot stand restored to her original status. On the above conspectus, the learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant. As such, the bail application is liable to be rejected.

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

14. 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 objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant with reference to the record, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present

application for bail, but without 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. .

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

16. It is accordingly **rejected**.

Order Date :- 8.12.2023

Vinay