

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1852 of 2023

**Applicant :-** Ashish Yadav

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko.

**Counsel for Applicant :-** Ajay Kumar Verma, Anil Singh, Bhairav Datt Sharma, Manoj Kumar Mishra, Utkarsh Misra

**Counsel for Opposite Party :-** G.A., Narvind Kumar Singh, Rajesh Kumar Tiwari

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Heard Shri Manoj Kumar Mishra, learned counsel for the accused-applicant, Shri Narvind Kumar Singh, learned counsel appearing for the complainant/informant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Ashish Yadav** for grant of bail, in Case Crime No. 0599 of 2022, under Sections 328, 376, 504, 506 I.P.C. and Section 3/4 D.P. Act, Police Station Thakurganj, District Lucknow, during trial.

3. While drawing the attention of this Court towards the first information report as well as the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., learned counsel for the applicant submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecutrix/victim.

4. It is further submitted that it is admitted to the prosecutrix in her statement recorded under Section 161 Cr.P.C. as well as in the first information report, which has been lodged by her that she was talking to the applicant since 2019 and they had developed intimacy towards each other and on 03.07.2021 at about 11:30 am. the applicant had called her and she was taken by him (applicant) to G.B. Lawn, Balaganj, where a room had already been booked by the applicant and there some noxious substance was given by the applicant to the prosecutrix, after consummation of which, she became unconscious and in that state sexual assault was committed.

5. It is also submitted that the prosecutrix in so many words had stated that her marriage was fixed with some other person and the applicant had sent some obscene photographs of her to the

future husband and after seeing those photographs he refused to marry the prosecutrix and thereafter the applicant had extended a proposal for marriage, which was refused by the prosecutrix and thereafter efforts were made by the prosecutrix and her family members to solemnize marriage with the applicant, however, his family members were not ready and demanding dowry.

6. It is vehemently submitted that the allegations, as has been levelled in the first information report as well as in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C. could not be believed, as the same are highly improbable, concocted and could not be believed on the touchstone of probability.

7. It is further submitted that it appears to be an admitted case of the prosecution that after commission of alleged assault the applicant and the prosecutrix had broken their relationship and they moved on and it was thereafter the marriage of the prosecutrix was fixed with some other person and some nude photographs of the prosecutrix were sent by the applicant to the future husband of the prosecutrix.

8. It is next submitted that in the whole of the case diary no photograph of any kind has been collected by the investigating officer belying the foundation of the prosecution case. It is also submitted that when the prosecutrix herself refused to marry the the applicant, as has been stated by her in the F.I.R. and in her statement recorded under Section 161 Cr.P.C., the allegation of commission of sexual assault on the pretext of extending false promise of marriage or demanding dowry may also not sustain.

9. It is further submitted that the allegations are vague, improbable and could not be believed having regard to the inherent weaknesses. The prosecutrix was also not subjected to any medical examination and in support of the allegation of sexual assault, there is only and only the untruthful statements of the prosecutrix and if the F.I.R. as well as the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C. are read conjointly, it would emerge that the prosecutrix was a consenting party. She admittedly is of 24 years and, thus, having regard to her majority and consent, no offence has been committed by the applicant.

10. It is next submitted that applicant is languishing in jail in this case since 12.11.2022 and he is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the

liberty.

11. Reliance has also been placed by learned counsel for the applicant on the law laid down by the Hon'ble Supreme Court in the cases of '**Shambhu Kharwar vs. State of U.P.**', [2022 SCC OnLine SC 1032] and '**Naim Ahmed vs. State (NCT of Delhi)**', [2023 SCC OnLine SC 89].

12. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the prosecutrix has not only been raped by the applicant but her marriage, which was scheduled to be solemnized with some other person has also been broken, as the applicant had sent some nude photographs of the prosecutrix to the would be groom of the prosecutrix and, therefore, he is committed an heinous offence and is not entitled to be released on bail.

13. Shri Narvind Kumar Singh, learned counsel appearing for the complainant/informant vehemently opposes the prayer of bail of the applicant by submitting that the life of an innocent girl has been ruined by the applicant and it is not only a case of sexual assault but also of demanding dowry and, thus, having regard to the allegations, which have been levelled by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C., the applicant is not entitled to be released on bail.

14. Having heard learned counsel for the parties and having perused the record, it is reflected that there are some facts which appears to be admitted to the parties. It is admitted to the prosecutrix that she was regularly talking/chatting with the applicant since 2019 and after two long years on 3rd July, 2021 she received a phone call from the applicant and has willingly accompanied him to a hotel where a room was allegedly booked by the applicant and some noxious substance was given by the applicant in the cold-drink, whereby she became unconscious and rape committed on her by the applicant. It is also admitted to the parties that after the happening of the said incident they continued to remain in a relationship. However, the marriage of the prosecutrix was fixed with some other person and when her marriage was scheduled to be solemnized, the applicant is alleged to have sent some nude photographs of the prosecutrix to the would be groom of the prosecutrix. It is again an admitted fact that in the whole of the case diary no picture of any kind has been collected by the investigating officer.

15. This Court is refraining itself from discussing the factual matrix any further as the same may affect the trial of the case before the trial Court. Suffice is to say that there is material on record on the basis of which the facility of bail may safely be

extended to the applicant, moreso, when he is in jail for the last one year and not having any criminal history. The presence of the applicant may be secured before the trial court by placing adequate conditions.

16. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

17. Let the accused/applicant- **Ashish Yadav** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

**(i) The applicant shall not attempt to make contact with the prosecutrix either directly or indirectly or through any social platform e.g. Facebook, WhatsApp, Instagram or with any of the prosecution witnesses and also shall not post any photograph of the prosecutrix as a display picture of him at any social platform and the violation of this condition alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.**

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

18. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

19. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

20. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

**Order Date :- 8.11.2023/Praveen**