

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2400 of 2023

Applicant :- Mazhar

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko.

Counsel for Applicant :- Dr. V.K. Singh, Anil Kumar Mishra, Bhanu Pratap Singh, Dinesh Kumar Tiwari, J.P. Shukla, Ravindra Shukla

Counsel for Opposite Party :- G.A., Devendra Pratap, Kaushal Kishore

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Ravindra Shukla, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Shashank Shekhar Singh, holding brief of Shri Devendra Pratap, learned counsel for the complainant/informant and perused the record.

2. This bail application has been moved by the accused/applicant- **Mazhar** for grant of bail, in Case Crime No.412 of 2022, under Sections 376, 452, 506, 120-B I.P.C., Police Station Jagdishpur, District Amethi, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that F.I.R. of this case has been lodged by none other than the prosecutrix herself, wherein it is alleged that the prosecutrix is being sexually exploited for the last four years by the applicant and when she had approached his family members, she was told that their marriage would be solemnized, however, marriage of the applicant has been solemnized with some other girl discretely. On 24.11.2022 the applicant had come to her house and sexually assaulted her and have also intimidated of dire consequences. The prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. have corroborated the allegations of the F.I.R. and it improved in her statement recorded under Section 164 Cr.P.C. that for the last five years the applicant and the prosecutrix were in living-in-relationship.

5. While drawing attention of this Court towards the statement

of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., it is vehemently submitted on behalf of the applicant that the grievance of the prosecutrix appears to be that the marriage of the applicant has been solemnized with some other girl while there was no such stipulation while they were entering into the living-in-relationship and the same has been carved out subsequently.

6. It is further submitted that even if the statements of the prosecutrix are believed as they were, it would emerge that she was a consenting party and she is admittedly aged about 26-27 years and thus was major and therefore, at the most sexual activity, which has taken place between the applicant and the prosecutrix, may only be termed as a consensual sexual activity of two adults and the same can never be termed as rape or sexual assault.

7. Learned counsel for the applicant has also relied on the law laid down by Hon'ble Supreme Court in ***Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and another***; Criminal Appeal No.233 of 2021, ***Shambhu Kharwar Vs. State of Uttar Pradesh***; 2022 SCC OnLine 1032 and ***Naim Ahamed Vs. State (NCT of Delhi)***; 2023 SCC OnLine SC 89 in order to show that a consensual activity between two adults may always not be given the colour of sexual assault committed on mistake of fact (by giving false promise of marriage)

8. It is next submitted that applicant is in jail in this case since 01.12.2022 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Learned counsel for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that the informant has been subjected to sexual assault continuously for about four years from before the lodging of the F.I.R. and the consent of the prosecutrix was obtained on the pretext of marrying her, however, applicant has solemnized his marriage with some other girl, therefore, keeping in view the fact that the consent of the prosecutrix was obtained by placing wrong facts, applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the applicant and the prosecutrix were in a relationship, which has been admitted by the prosecutrix in her statement recorded under Section 164 Cr.P.C., for the last five years and they were also cohabiting. The grievance of the prosecutrix is with regard to the fact that the sexual activity had taken place on the false promise of marriage, which has been violated by the applicant as he had solemnized his marriage with some other girl. The defence of the applicant appears to be that there was no promise of marriage prior to establishment of sexual activity and as the applicant and the prosecutrix belong to different religion, it could not be presumed that prosecutrix had acted on the promise of marriage as the same could only be solemnized under special marriage act by which an application is required to be moved before the concerned authority. Thus, it is submitted that story of cohabitation on false promise of marriage has been carved out subsequently. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 01.12.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and 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**.

13. Let the accused/applicant- **Mazhar** 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 tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

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

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

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

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

16. 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 of this Court on the merits of the case.

Order Date :- 2.11.2023

Anupam S/-