

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3802 of 2023

Applicant :- Satish Chandra

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

Counsel for Applicant :- Santosh Kumar Srivastava, Abhinav Srivastava, Santosh Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Rahul Srivastava, Advocate holding brief for Shri Abhinav Srivastava, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved on behalf of the applicant/**Satish Chandra** for grant of bail, in Case Crime No. 290 of 2022, under Section 376, 506 I.P.C. registered at Police Station - Kotwali Tanda, District - Ambedkar Nagar, during pendency of 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 the prosecutrix herself has lodged the First Information Report on 03.11.2022 alleging therein that for the last 5 years she is continuously being raped on the pretext of marriage by the accused-applicant, however, when she insisted him to marry, he refused to solemnize marriage whereupon the victim had consumed some noxious substance and was admitted in a hospital. In her statement recorded under Section 161 & 164 Cr.P.C., the prosecutrix admitted to be in a relationship with the accused-applicant for the last 5 years and also that the applicant had sexually assaulted her on the pretext of false promise of marriage. It is also stated that she became pregnant and some medicine was given by the accused-applicant whereby the foetus was aborted.
5. Highlighting the above facts, it is vehemently submitted by learned Counsel for the applicant that admittedly, the date of birth of the victim is 12.09.1999 whereby she comes at the date of lodging of the FIR of about 22 years. She has also stated her

age in her statement recorded under Section 161 & 164 Cr.P.C. as 22 years, thus, she was major at the time of lodging of the First Information Report.

6. It is also submitted that even if the facts as unfolded by the prosecutrix in her statements are taken on its face, it will emerge that the applicant and the prosecutrix were in a relationship and they were frequently cohabiting and when she insisted the applicant to marry her, he refused and the FIR has been lodged.

7. It is vehemently submitted that no promise of marriage was ever given by the accused-applicant and the same may also not be inferred from the statements of the prosecutrix.

8. Elaborating further, it is submitted that in her statements recorded under Section 161 & 164 Cr.P.C., it is reflected that the sexual relations were made first and the proposal to marry was given afterwards and therefore, the same may not come within the purview of obtaining consent for sexual relationship by misrepresentation of facts. In this regard, the law laid down by the Hon'ble Supreme Court in the case of ***Shambu Kharwar Vs. State of U.P.; MANU/SC/1011/2022: AIR 2022 SC 3901 and Naim Ahamed Vs. State (NCT of Delhi), MANU/SC/0080/2023: (2023) Cri.LJ 2785***; has been relied.

9. Learned Counsel for the accused-applicant lastly submits that the applicant is languishing in jail since 11.11.2022, as also, the applicant is not having any previous criminal history 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 and the conclusion of the trial is not affected in near future.

10. Learned A.G.A. on the other hand vehemently opposes the prayer for bail on the ground that in the FIR as well as in the statements of the prosecutrix, sexual assault is shown to have been committed for the last 5 years before lodging of the FIR and at that point of time, the prosecutrix was minor and thus her consent was immaterial.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that it has been admitted by the prosecutrix in her statement recorded under 161 & 164 Cr.P.C. that she was in love with the applicant and was going on his insistence to a particular place situated at the outskirts of the village where they were frequently cohabiting. It is highlighted by learned Counsel for the applicant that even if the statements of the prosecutrix are believed, no promise of marriage was given by the accused-applicant before making sexual relations,

therefore, it cannot be presumed at this stage that the sexual relations were made on the pretext of false promise of marriage. The accused-applicant is languishing in jail since 11.11.2022 and he has no previous criminal history.

12. Keeping in view all the facts and circumstances of the case, as also, the period of incarceration already undergone, in the considered opinion of this Court, the accused-applicant has made out a case for bail. The bail application is thus **allowed**.

13. Let the applicant/**Satish Chandra** 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 on the merits of the case.

Order Date :- 3.11.2023

Lokesh Kumar

[Mohd. Faiz Alam Khan, J.]