

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4948
of 2023

Applicant :- Chandra Bhan Patel

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

Counsel for Applicant :- Amitabh Tripathi,Pravin Singh,Vyas
Narayan Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard 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 by the accused/applicant- **Chandra Bhan Patel** for grant of bail, in Case Crime No. 17/2023, under Sections 376, 504, 506 IPC, Police Station Mill Area, District Raebareli, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a false implication. FIR of this case has been lodged by the prosecutrix herself alleging therein that for the last 3 years she is being sexually exploited by the applicant on the pretext of extending false promise of marriage. In her statements recorded under Sections 161 and 164 Cr.P.C. the allegations of committing sexual assault have been levelled against the applicant.
4. Highlighting the FIR as well as the statements of the prosecutrix recorded under Sections 161 and 164 C.P.C., it is vehemently submitted that it is admitted to the prosecutrix that she was earlier married to one Rakesh and the applicant is the son of the elder brother of Rakesh who, according to the prosecutrix, had sexually assaulted her when she was at the house of her husband and thereafter she started living at her maternal house on account of some differences which had arisen between her and her husband.
5. It is also highlighted that the prosecutrix had admitted in categorical terms that she started living with the applicant in a rented accommodation with her children and resided with him

for many years and thereafter the applicant had solemnized marriage with some other girl and on the happening of the marriage of the applicant, the FIR has been lodged.

6. It is vehemently submitted that conduct of the prosecutrix would clearly reveal that she was a consenting party. Her age was admittedly more than 30 years at the date and time of the alleged incident and since she was already married to one Rakesh and did not get divorced there was no opportunity available to her to act upon any proposal of marriage given by the applicant as without getting divorced from her earlier husband, she could not marry with the applicant. Reliance in this regard has been placed on *Shambhu Kharwar vs State of Uttar Pradesh reported in MANU/SC/1011/2022 : AIR2022SC3901 and Naim Ahamed vs State(NCT of Delhi) in MANU/SC/0080/2023 : 2023CriLJ2785*.

7. It is also submitted that the applicant is in jail in this case since 18.1.2023 and he is not having any criminal antecedent. Charge sheet in this case already been submitted and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8 . Learned A.G.A. on the other hand submits that the applicant is accused of committing an heinous offence and therefore he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix was aged about 32 years at the date and time of the incident. She admitted in her statements recorded under Sections 161 and 164 Cr.P.C. that when she was living separately from her husband at her maternal house, the applicant approached her and she accepted his proposal to live with him and they together had taken a rented accommodation and resided there for many years along with her children. It is also admitted by her that she had not taken divorce from her husband, namely, Rakesh Kumar and in this background, it is submitted that since the prosecutrix was not divorced there was no opportunity available to her to solemnize marriage with the applicant. Reliance has also been placed in the case of **Shambhu Kharwar (supra)** and **Naim Ahamed (supra)**. The applicant is in jail in this case since

18.1.2023 and he is not having any criminal history. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions.

10. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

11. Let the applicant- **Chandra Bhan Patel** involved in the aforesaid case be released on bail on 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.

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

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

14. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 30.11.2023

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