

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9297 of 2023

Applicant :- Mahesh Sharma

Opposite Party :- State Of U.P. Thru. Secy. Home Deptt. Civil Secrett. Lko. And 3 Others

Counsel for Applicant :- Arshad Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per communication sent by the Chief Judicial Magistrate, Barabanki, opposite party no.2 has been served sufficiently, however, he is not represented.

2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Mahesh Sharma** for grant of bail, in Case Crime No.136 of 2021, under Sections 363, 366, 376, 504 I.P.C., 3/4 of the P.O.C.S.O. Act and 3(1)(r), 3(1)(s), 3(2)(v) of the S.C./S.T. Act, Police Station Safdarganj, District Barabanki, during trial.

4. 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.

5. It is further submitted that F.I.R. of this case has been lodged by the father of the prosecutrix on 30.04.2021 alleging therein that his daughter aged about 15 years has been enticed away by the applicant on 21.04.2021 with the help of other co-accused person and when his family members had inquired from co-accused Krishna Kumar @ Kanji and his family members, the informant was abused by them. On recovery of the prosecutrix, her statements under Section 161 and 164 Cr.P.C. were recorded.

6. Highlighting the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., it is vehemently submitted on behalf of the applicant that it is admitted by the prosecutrix in her statement that she was having love affair with the applicant and they were talking frequently on phone and on 21.04.2021 at

about 05:00pm. she was taken to a temple by co-accused Krishna Kumar @ Kanji, where her marriage was solemnized with the applicant and thereafter they started living as husband and wife.

7. It is vehemently submitted that though in her statement recorded under Section 161 Cr.P.C., the prosecutrix has stated to have established sexual relations, however, in her statement recorded under Section 164 Cr.P.C., no such statement has been made by her and thus having regard to the authenticity attached with the statement recorded under Section 164 Cr.P.C., before a magistrate, it could not be presumed that sexual relations were established between the applicant and prosecutrix and the investigating officer only on account of hypothesis has assumed sexual relations and submitted charge sheet.

8. It is further submitted that age of the prosecutrix as shown in her educational credential may not be believed on the score that date of birth of the prosecutrix as 30.06.2006 has been relied on the basis of a certificate issued by the Principal of the school while no certificate as desired by law has been submitted to the investigating officer, moreover the age of the prosecutrix appears to be not relevant keeping in view the absence of consummation of marriage in the statement of prosecutrix recorded under Section 164 Cr.P.C.

9. It is also highlighted that in the event of contradictions between the statements recorded under Sections 161 and 164 Cr.P.C., the statement, which has been recorded under Section 164 Cr.P.C. would prevail. The applicant is in jail in this case since 04.06.2021 and only in chief examination of one prosecution witness has been recorded before the trial court so far and having regard to the pace with which the trial is going on before the trial court, the same is not expected to conclude in near future. Applicant 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.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that sexual assault has been committed by the applicant with a girl of very tender age 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.

11. Having heard learned counsel for the parties and having

perused the record, it is evident that though the age of the prosecutrix has been shown on the basis of her educational credential about 15 years, however, the statement of the prosecutrix recorded under Section 164 Cr.P.C. has been highlighted, wherein no specific allegation of establishing sexual relations has been stated and the only averment, which has been made in her statement is pertaining to solemnization of marriage and of living as husband and wife and it is submitted that in absence of any specific averment of establishing sexual relations, the establishment of the same may not be presumed and it is vehemently submitted on behalf of the applicant that the investigating officer has committed illegality in submitting charge sheet. The prosecutrix has not levelled any allegation against the applicant in her statement recorded under Sections 161 and 164 Cr.P.C. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 04.06.2021 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- **Mahesh Sharma** 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 :- 28.11.2023

Anupam S/-