

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9919 of 2023

Applicant :- Mohit Kumar

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

Counsel for Applicant :- Shailendra Singh Rajawat, Akash Verma, Sunder Singh

Counsel for Opposite Party :- G.A., Rizwanul Haque Ansari

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Shailendra Singh Rajawat, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Rizwanul Haque Ansari, learned counsel for the complainant/victim and perused the record.

2. This second bail application has been moved by the accused/applicant- **Mohit Kumar** for grant of bail, in Case Crime No.429 of 2022, under Sections 376, 377, 452, 323, 506 I.P.C., Police Station Kotwali Sadar, District Lakhimpur Kheri, during trial as his first bail application has been rejected vide order dated 16.11.2022 passed in Criminal Misc. Bail Application No.12071 of 2022 by a Coordinate Bench of this Court, however, the Hon'ble Judge, who has rejected first bail application of the applicant, has released this second bail application and it is in this background, this bail application has been presented before this Court.

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 the prosecutrix herself on 26.04.2022 with the allegations that the applicant used to visit her house and some years ago, he had clicked an obscene photograph of her when she was taking bath and thereafter started intimidating the prosecutrix to establish sexual relations and in default he will make photograph viral on social media platforms and one day he came to her house and pressurized her to consume cold drink, whereby she fainted and in that state he had clicked many other photographs and when she gained consciousness, she found herself naked and thereafter the applicant on regular basis committed sexual assault on her. It is also stated that after

intimidating the applicant had taken the prosecutrix to different hotels in Haridwar, Lucknow and Sitapur and has made sexual assault on her. It is also alleged that he also used to assault her and pertaining to the same, she has also made a complaint, however, on that complaint the brother of the applicant was arrested under Sections 107, 166 and 151 Cr.P.C. and finally on 23.04.2022 at 11:00pm. sexually assaulted her against the course of nature. The prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has narrated the same story.

5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the prosecutrix was admittedly aged about 35 years at the date and time of the incident. She was a married lady and was also having children and they come close to each other about 4-5 years ago from before lodging of the F.I.R. and they started meeting each other and also cohabiting and since the prosecutrix was major and was a consenting party, no offence in fact has been committed by the applicant.

6. It is vehemently submitted that the conduct of the prosecutrix in accompanying the applicant to different places like Haridwar, Lucknow and Sitapur and residing in different hotels would itself demonstrate that she was a consenting party and there was no element of blackmailing on account of any nude photograph of her. Elaborating further, it is submitted that during the course of investigation no such photograph or video has been collected by the investigating officer, which may be termed obscene on the basis of which the prosecutrix may be blackmailed and this fact has only been stated in the F.I.R. as well as in the statements of the prosecutrix to fortify her false allegations.

7. It is also submitted that there was occasion and opportunity to the prosecutrix to have complained about the illegal act of the applicant, however, she chooses to remain silent, which is clear indication of her consent. While drawing attention of this Court towards various photographs of the prosecutrix with the applicant, it is submitted that these photographs would speak in volumes about the consensual relationship of the prosecutrix with the applicant.

8. It is also submitted that it is only on account of marriage of the applicant, which has been solemnized on 23/24.04.2022, the prosecutrix became annoyed and lodged this F.I.R. In this regard two invitation cards of the marriage of the applicant has been placed as Annexure No.9 to the bail application. It is also submitted that there is no abnormality or injury etc. has been found on the person of the prosecutrix.

9. It is vehemently submitted that earlier also the prosecutrix has lodged a criminal case against her father-in-law alleging sexual assault. It is further submitted that there has been substantial change in circumstances since rejection of the first bail application of the applicant as the statement of the prosecutrix has been recorded before the trial court and now there is no apprehension that the applicant would be in a position to influence her.

10. It is next submitted that applicant is in jail in this case since 01.08.2022 and only the prosecutrix has been testified before the trial court and having regard to the pace with which the case is going on before the trial court, the same is not expected to conclude in near future and 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.

11. 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.

12. Shri Rizwanul Haque Ansari, learned counsel for the complainant/victim vehemently opposes the prayer of bail of the applicant on the ground that first bail application of the applicant has been rejected by passing a reasoned order and there is no substantial change in circumstances since then and since the allegation of commission of rape has been corroborated by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. as well as before the trial court as P.W.-1, the applicant is not entitled to be released on bail.

13. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix was admittedly 35 years at the date and time of the alleged incident. She in the F.I.R. has stated that she was being blackmailed by the applicant on account of some photographs which he had clicked while she was bathing and on the basis of these photographs she was being sexually assaulted, however, no such photograph or any video clip has been collected by the investigating officer during the course of investigation. No abnormality or injury etc. has been found on the person of the prosecutrix in her medical examination. She was a married lady and was also having children. The defence of the applicant

appears to be that since no photograph etc. has been recovered during the course of investigation, the whole foundation of the prosecution case has gone and thus the story of being blackmailed may not stand. It is also the defence of the applicant that the prosecutrix and the applicant were in a relationship and they were cohabiting with free consent of the prosecutrix. The prosecutrix has also stated that for the last four years from before lodging of the F.I.R., she was being sexually assaulted. It is in this background submitted by learned counsel for the applicant that no complaint of any kind has been made by the prosecutrix at any stage during these years. Statement of the prosecutrix has been recorded before the trial court as P.W.-1. Various instances have been shown by learned counsel for the applicant emerging in the evidence of the prosecutrix in order to show that the whole story has been cooked up with falsehood. It is also shown that when the marriage of the applicant was solemnized on 23.04.2022, the prosecutrix lodged F.I.R. against him and it is not a case where the applicant had extended any proposal for marriage to the prosecutrix. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 01.08.2022 without any previous criminal history. Thus, in the considered opinion of this Court, the reasons mentioned herein-before are sufficient enough to infer the change in circumstances since rejection of first bail application of the applicant.

14. 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 second bail application is thus **allowed**.

15. Let the accused/applicant- **Mohit Kumar** 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 contact the prosecutrix or her family members either directly, indirectly or through any social platform and violation of this condition alone shall be a ground for cancellation 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.

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

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

18. 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 :- 8.12.2023

Anupam S/-