

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10745 of 2023

Applicant :- Akash Verma Alias Udham

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

Counsel for Applicant :- Ambrish Kumar, Shiv Pal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The State in its counter affidavit has enclosed the communication sent by the Police Station Jaidpur, District Barabanki with regard to service of notice on opposite party no.2, thus opposite party no.2 has been sufficiently served, however, he is not represented.

2. Heard Shri Shiv Pal Singh, 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- **Akash Verma Alias Udham** for grant of bail, in Case Crime No.228 of 2023, under Section 376 I.P.C., Section 3(2)(v) of the S.C./S.T. Act and Section 5(m)/6 of the P.O.C.S.O. Act, Police Station Jaidpur, 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 in the F.I.R, which has been lodged by the prosecutrix herself, it is stated that she was in love with the applicant and they have decided to solemnize marriage thereafter the applicant had established sexual relations with her and when she insisted to solemnize marriage, he refused and therefore, she has been sexually assaulted on the pretext of false promise of marriage extended by the applicant. Allegations of the F.I.R. have been corroborated in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C..

6. Highlighting the above facts, it is vehemently submitted on

behalf of the applicant that age of the applicant as is evident from the arresting memo is about 22 years and he was in love with the prosecutrix, which has also been admitted by prosecutrix in her statements and admittedly they were in a relationship and were cohabiting frequently, however, no promise to marry was ever extended by the applicant, which is also reflected from the statement of the prosecutrix, wherein it is stated that false promise of marriage was extended after establishment of sexual relations.

7. While relying on the law laid down by Hon'ble Supreme Court in ***Shambhu Kharwar Vs. State of Uttar Pradesh***; 2022 SCC OnLine 1032 and ***Naim Ahamed Vs. State (NCT of Delhi)***; 2023 SCC OnLine SC 89, it is submitted by learned counsel for the applicant that every sexual relations may not be termed as sexual assault and keeping in view the age of the prosecutrix as well as of the applicant (22 years), the only inference, which could be drawn, is that the applicant and the prosecutrix had sexually attracted to each other and indulged in sexual activity.

8. It is next submitted that applicant is in jail in this case since 02.06.2023 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. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix as per her educational credentials is about 16 years and 3 months, thus she was minor at the date and time of the alleged incident and the age of the applicant was also less than 22 years as his age has been shown as 22 years. It has been highlighted on behalf of the applicant that in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. that sexual relations are shown to have established before making any promise of marriage as admittedly the same was extended afterwards, even if the statements of the prosecutrix are believed on its face and while relying on the law laid down by Hon'ble Supreme Court in ***Shambhu Kharwar (supra)*** and ***Naim Ahamed (supra)***, it is submitted that relationship of the applicant and the prosecutrix may not be termed as sexual

assault having regard to the age of the applicant and keeping in view the fact that prosecutrix was a consenting party and the consent is said to have been obtained on the promise of marriage. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 02.06.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. 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**.

12. Let the accused/applicant- **Akash Verma Alias Udham** 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.

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

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

15. 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 :- 3.11.2023

Anupam S/-