

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10691 of 2023

Applicant :- Shubham Gupta

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko And Another

Counsel for Applicant :- Vinod Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per the information received by the Chief Judicial Magistrate, Barabanki, the informant/victim has been sufficiently served. However, she 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- **Shubham Gupta** for grant of bail, in F.I.R./Case Crime No. 108 of 2023, under Section 376 I.P.C., Police Station Satrikh, District Barabanki, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The F.I.R. of the instant case has been lodged by the victim by moving an application under Section 156(3) Cr.P.C. and the allegations levelled therein have been drafted with the help of a legal professional and, therefore, the story, as narrated in the F.I.R. could not be believed being highly improbable and concocted.
5. It is further submitted that it is an admitted case of the victim that the applicant was a regular visitor of her house and one day he found the prosecutrix alone and committed sexual assault and this fact (of sexual assault) was conveyed by the prosecutrix to her family members, on which, the applicant stated that he would solemnize marriage with the prosecutrix and on this pretext no complaint of any kind was made anywhere with regard to the sexual assault committed by the applicant and, thereafter, for two years the applicant continuously established sexual relations with her despite her resistance and thereafter the marriage of the applicant was fixed somewhere else and after getting an information with regard to that, she insisted the applicant to solemnize marriage with her,

to which, he refused and also intimidated her.

6. It is vehemently submitted that it is an admitted fact that after the alleged sexual assault committed by the applicant for the next two years the prosecutrix was indulged in sexual relations with the applicant and it is specifically stated that these sexual relations were made against her will. However, even after the commission of the first sexual assault, no complaint of any kind was made to any public authority.

7. It is further submitted that the whole story, as has been cooked up by the prosecutrix is improbable due to inherent weaknesses and could not be believed. The fact is that the applicant was in a relationship with the prosecutrix and there was no element of promise of marriage and the same has been crafted afterwards in order to harass the applicant.

8. Reliance has been placed by learned counsel for the applicant on the law laid down by the Hon'ble Supreme Court in the cases of '**Shambhu Kharwar vs. State of U.P.**', [2022 SCC OnLine SC 1032] and '**Naim Ahmed vs. State (NCT of Delhi)**', [2023 SCC OnLine SC 89].

9. It is next submitted that applicant is languishing in jail in this case since 20.06.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

10. 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, therefore, he is not entitled to be released on bail.

11. Perusal of the record would reveal that after happening of the first sexual assault the prosecutrix appears to remain in relationship with the applicant and in these next two years, as stated by her, sexual relations were established between them frequently, against her will. Admittedly no complaint of any kind has been made by the prosecutrix in these two years. It appears to be an admitted fact that when the marriage of the applicant was fixed with some other girl and an information was received by the prosecutrix, she instituted the instant proceedings. The defence of the applicant appears to be that the relationship between the applicant and the prosecutrix was a relationship between two adults and as the prosecutrix was a 'consenting party', no offence in fact has been committed by the applicant, moreso when the prosecutrix is aged about 26 years, while the age of the applicant is stated to be of 23 years.

Applicant is languishing in jail in this case since 20.06.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

12. 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- **Shubham Gupta** 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 :- 8.11.2023

Praveen