

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10809 of 2023

Applicant :- Mohit Singh

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.,Jyotinjay Verma

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Manoj Kumar Singh learned counsel for the accused/applicant, Shri Jyotinjay Verma, learned counsel for opposite party no.2/ complainant 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- Mohit Singh for grant of bail, in Case Crime No. 107 of 2023, under Sections 363, 344, 323, 376, 504 IPC & Section 3/4 POCSO Act, Police Station Khairighat, District Bahraich, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report has been lodged by the mother of the prosecutrix on 4.4.2023 alleging therein that the applicant had enticed away her daughter aged about 17 years about one year before lodging of the First Information Report and also kept her as his wife and thereafter ousted her from his house and when the applicant was contacted, he promised to marry the prosecutrix on her becoming major and then it is informed that the applicant was going to solemnize his marriage on 21.5.2023. The prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. had stated to have been sexually assaulted by the applicant about one and half years before recording of her statements.

4. Learned counsel for the applicant while drawing the attention of this Court towards the statements recorded under Sections 161 and 164 Cr.P.C. as well as the School Leaving Certificate of the prosecutrix, wherein her date of birth has been shown as 03.06.2004, vehemently submitted that it is an admitted fact that the prosecutrix at the time of lodging of the First Information Report was aged about 18 years and 10 months and she in her statements had stated to have accompanied the

applicant with her own will, wish and volition and also stated to have resided with him and the incident which has been shown to have occurred about one and half year before lodging of the FIR. Therefore even if the case of the prosecution is taken on its face, at first she appears to be a consenting party and secondly, the allegations are highly improbable and could not be believed on the touch stone of probability.

5. It is further submitted that timing of lodging of the First Information Report is also significant in this case as the FIR is lodged when the marriage of the applicant was admittedly scheduled to be solemnized on 21.5.2023, thus lodging of the FIR is nothing but to pressurize the applicant to solemnize his marriage with the prosecutrix which was never agreed upon.

6. Learned counsel for the applicant has relied on the judgment passed by the Hon'ble Supreme Court in case of ***Shambhu kharwar vs state of Uttar Pradesh reported in MANU/SC/1011/2022 : AIR 2022 SC 3901 and Naim ahamed vs state(NCT of Delhi) reported in MANU/SC/0080/2023 : 2023 CriLJ 2785*** in order to show that even if the case as surfaced in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. is believed as it is, there was no reasonable ground available for the applicant to act upon and her silence for so many months would also dilute the allegations of commission of sexual assault. The applicant is in jail in this case since 08.06.2023 and he is not having any criminal history. Charge sheet in this case has already been submitted and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

7. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

8. Shri Jyotinjay Verma, learned counsel for the opposite party no.2 / complainant vehemently opposes the prayer of bail of the applicant by citing Sections 29 and 30 of the POCSO Act and also by urging that the consent of a minor may not be termed as 'consent' at all and since the prosecutrix has been sexually assaulted by extending false promise of marriage, the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted situation that in the First Information Report the informant appears to have stated in categorical terms that the prosecutrix had accompanied the applicant about one year before lodging of the First

Information Report while the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has extended this period to one and half year. However, the FIR could not be lodged earlier and it is stated that a promise to marry prosecutrix was made by the applicant, the FIR could not be lodged. The defence of the applicant appears to be that even if the case of the prosecution is admitted as it is, at the time of first sexual intercourse there was admittedly no promise of marriage was given and the same was extended subsequently when the prosecutrix returned to her house and thereafter no instance has been mentioned by the prosecutrix of any sexual intercourse taken place between the applicant and prosecutrix. Admittedly the prosecutrix was aged about 18 years and 10 months at the date and time of lodging of the FIR, though the incident is shown to have occurred about one and half year before lodging of FIR, as per the prosecutrix and one year as per the informant. The applicant is in jail in this case since 08.06.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. 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- **Mohit Singh** 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 :- 21.11.2023

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