

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10990 of 2023

Applicant :- Durgesh Nag

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

Counsel for Applicant :- Upendra Kumar Verma

Counsel for Opposite Party :- G.A.,Bahar Ali

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by learned counsel for the complainant is taken on record.
2. Heard Shri Upendra Kumar Verma, learned counsel for the accused-applicant, Shri Bahar Ali, learned counsel appearing for the complainant/informant 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- **Durgesh Nag** for grant of bail, in F.I.R./Case Crime No. 369 of 2023, under Section 376 and 506 I.P.C., Police Station Laharpur, District Sitapur, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of the instant case was lodged by the victim herself on 06.06.2023 with the allegation that on the pretext of marrying the victim the applicant had sexually assaulted her for the last two years and on 26.05.2023 he refused to marry her. It is also stated therein that for the last two years the family members of the applicant were ready to solemnize his marriage with the informant, however, they are not now ready to marry the applicant with the informant/victim and also intimidating her.
5. While drawing the attention of this Court towards the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., it is vehemently submitted that it is specifically stated in these statements that cohabitation between the applicant and victim was happening with the consent of the prosecutrix, however, according to her, the consent was given acting upon a false promise of marriage. It is vehemently submitted that in her statements the prosecutrix has admitted that applicant was ready to solemnize marriage with her and his family members were initially agree but subsequently they

refused to marry the applicant with the informant/victim on the ground that the informant/victim is not so beauty and under the pressure of his family members the applicant is also not ready to solemnize marriage.

6. While relying 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], it is vehemently submitted that there is a very thin line so far as giving of consent or obtaining consent by mistake of fact (on the pretext of false promise of marriage) and the same may only be decided/adjudicated in full-fledged trial after providing an opportunity to the parties to lead evidence in this regard.

7. It is further submitted that admittedly the prosecutrix has stated her age in the F.I.R. to be of 25 years and as per the certificate issued by the C.M.O., Sitapur, her age has been assessed on the basis of radio-logical evidence as 22 years and as per the Aadhar Card, her date of birth is coming as 01.01.1998, by which she is coming to be of 25 years at the date and time of the alleged incident.

8. It is also submitted that the prosecutrix has also refused to undergo internal medical examination and, thus, in support of the allegation of sexual assault, there is only untrustworthy statement of prosecutrix alone, which could not be believed. Applicant is languishing in jail in this case since 23.06.2023 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.

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

10. Shri Bahar Ali, learned counsel appearing for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that a differently abled girl has been sexually exploited on the pretext of marrying and, therefore, having regard to the gravity of the offence, the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix was major at the date and time of the alleged incident, thus, she was capable of taking decisions. In the first information report as

well as in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., she has admitted that she was in the relationship with the applicant for the last two years, from before lodging of the F.I.R. It is also stated by the prosecutrix in her statements that initially the family members of the applicant were ready to marry her, however, subsequently they refused and also that for the last two years they were cohabiting. However, it is alleged that her consent has been obtained on account of false promise of marriage. The defence of the applicant appears to be that the sexual activity, which had taken place between the applicant and victim was a 'consensual act' of two adults and the same could not be given the colour of rape. Reliance has also been placed on the law laid down by the Hon'ble Supreme Court in '*Shambhu Kharwar vs. State of U.P.*' (*supra*) and '*Naim Ahmed vs. State (NCT of Delhi)*' (*supra*). Applicant is languishing in jail in this case since 23.06.2023 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- **Durgesh Nag** 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 :- 10.10.2023

Praveen