

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11516 of 2023

Applicant :- Ali Mohammad @ Daroga

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

Counsel for Applicant :- Kaushal Kishore Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
3. Heard Shri Kaushal Kishore Tewari, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Ali Mohammad @ Daroga** for grant of bail, in Case Crime No.94 of 2023, under Sections 376, 506, 420 I.P.C., Police Station Bakshi Ka Talab, District Lucknow, during trial.
5. 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.
6. It is further submitted that in the F.I.R., which has been lodged by the prosecutrix, as well as in her statement recorded under Sections 161 and 164 Cr.P.C., allegations have been levelled to the tune that for the last four months from before lodging of the F.I.R., applicant was sexually assaulting her by hiding his real name and religion and when she insisted to solemnize marriage, he refused and revealed that he is professing another religion and thus prosecutrix has been sexually assaulted by misrepresentation of fact.
7. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that age of the prosecutrix as disclosed

by her in her medical report is 34 years while in her statement recorded under Section 164 Cr.P.C. is 24 years and admittedly she is a married lady and is also having a child and therefore, allegation of sexual assault on the pretext of marrying could not be believed by any prudent person. Medical report of the prosecutrix is also clean.

8. It is vehemently submitted that prosecutrix is professing Hindu religion, wherein it is not possible to marry a person without obtaining divorce from her first husband, therefore, allegations, which have been alleged in the F.I.R. as well as in the statement of the prosecutrix, are patently false and could not be believed. In fact the prosecutrix was major and she was admittedly having ill relations with her husband and the applicant and she had developed liking towards each other and sexual relations were made with the consent and will of the prosecutrix and therefore, sexual activity taken place between the applicant and prosecutrix was of consensual sexual activity and the same could not be termed as sexual assault or rape.

9. It is next submitted that applicant is in jail in this case since 13.04.2023 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.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that by hiding his name and religion, the applicant had sexually assaulted the prosecutrix 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.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix was major at the date and time of the alleged incident and she is a married lady and is also having a child and admittedly she is having strained matrimonial relations with her husband. The defence of the applicant appears to be that even if the story as unfolded by the prosecutrix in the F.I.R. as well as in her statement recorded under Sections 161 and 164 Cr.P.C. is believed, the same may not amount to sexual assault or rape as there was no reason for the prosecutrix to have believed that the applicant would marry her on the score that she was already married with another person and without obtaining divorce, second marriage could not be solemnized, therefore, there is no mistake of fact and the sexual relations established between them were consensual. Charge-sheet in this case has already been filed. Applicant is in

jail in this case since 13.04.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Ali Mohammad @ Daroga** 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 of this Court on the merits of the case.

Order Date :- 6.11.2023

Anupam S/-