

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11617 of 2023

Applicant :- Dipak Singh

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

Counsel for Applicant :- Santosh Kumar Jha

Counsel for Opposite Party :- G.A., Furkan Pathan, Jitendra Kumar Tripathi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the accused/applicant, learned A.G.A. for the State as well as Shri Furkan Pathan, learned counsel for the informant/victim and perused the record.
2. This bail application has been moved by the accused/applicant- **Dipak Singh** for grant of bail, in Case Crime No. 279 of 2023, under Sections 376, 377, 506, 313 IPC, Police Station Sarojininagar, District Lucknow, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that the FIR of this case has been lodged by the prosecutrix/victim herself alleging therein that since 2016, she is known to the applicant and in the year 2017, the applicant started making sexual relations with her by extending promise of marriage and he also persuaded her to live with him and they started living in a rented accommodation and she also got pregnant by him on two occasions and on 13.10.2020, the applicant has also caused her Fallopian tube removed by admitting her in a hospital and thereafter, she came to know that the applicant is already married to one Vaishali since 26.4.2018 and they are also having a baby boy. It is also stated that she is being threatened by many persons. In her statements recorded under Sections 161 & 164 CrPC, the victim has supported the allegations of the FIR.
5. Highlighting the above facts, it is vehemently submitted that it is admitted to the prosecutrix/victim that she was in a relationship with the applicant since 2016 and they had also gone to Agra together and resided in a hotel and also cohabited.

It is also admitted by her in her statement recorded under Section 164 CrPC that when she returned from Agra and informed her family members of her intention to marry the applicant, her proposal was opposed by her family members and on this account, she started living separately from her family members at Sarojininagar, Lucknow and it was in the year 2019, she conceived. It is submitted that the conduct of the prosecutrix/victim to remain in the relationship of the applicant for four years till 2020 is a prima facie proof of her consent to the sexual relations and it is only on account of the fact that when their relations become strained, the instant case has been lodged.

6. It is further submitted that the allegations of removal of Fallopian tube are patently absurd and could not be believed. In this regard, the statement of one Dr. Anamika Shukla was recorded by the investigating officer wherein the said Doctor after witnessing the prescriptions of the relevant dates has stated in specific terms that the prosecutrix/victim was having ectopic pregnancy (in the Fallopian tubes where there is no sufficient space for growth of foetus) and the same in any case was to be terminated to save the life of the prosecutrix/victim.

7. It is vehemently submitted that it is evident that the termination of pregnancy by the said Dr. Anamika Shukla has been done after obtaining consent of the prosecutrix/victim and the applicant was not in the picture and it is only on account of the strained relationship, now the allegations are being levelled without there being any basis. It is also submitted that the allegations of not informing the prosecutrix/victim about the marriage of the applicant may also not be believed, as she had remained with him for four years. The reliance has also 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].

8. It is further submitted that the applicant is in jail in this case since 22.7.2023 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed 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.

9. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

10. Shri Furkan Pathan, learned counsel for the informant/victim vehemently opposes the prayer for bail of the applicant on the ground that the prosecutrix/victim could only know the earlier marriage of the applicant with one Vaishali in the year 2023 and it is only thereafter, the FIR has been lodged.

11. It is also submitted that the consent of the prosecutrix/victim for sexual relations was obtained by placing wrong facts and concealing actual state of affairs and so much so, the pregnancy of the prosecutrix/victim was terminated twice and thus having regard to the brutality with which the prosecutrix/victim has been treated by the applicant, he is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that it is admitted to the prosecutrix/victim that after joining the company wherein the applicant was working, they had gone to Agra together in the year 2017 and they resided in a hotel where the sexual relations were established between them. In the statement of the prosecutrix/victim recorded under Section 164 CrPC, it is not stated that the sexual relations were made on any promise of marriage and it is stated by her that when she returned from Agra and informed her family members of marriage with the applicant, her family members refused to marry her with the applicant and thereafter, she started living with the applicant in a rented accommodation. It also appears to be admitted that till 2022, the applicant and the prosecutrix/victim were living together. In the year 2019, the first termination of pregnancy has been alleged, pertaining to which the statement of one Dr. Indu Gupta was recorded by the investigating officer wherein she stated that on 1.12.2019, she had examined the prosecutrix/victim and she was not found pregnant. A copy of the statement of the said Dr. Indu Gupta has been placed at page no. 42 of the paper book. With regard to the pregnancy allegedly of date 12-13.10.2020, there is the statement of one Dr. Anamika Shukla wherein she has stated that the pregnancy was fertilized in the Fallopian tube and having regard to this, the termination of pregnancy was must in order to save the life of the prosecutrix/victim. It is further stated by Dr. Anamika Shukla that the pregnancy was terminated on the consent given by the prosecutrix/victim. It appears to be an admitted fact that the applicant is married to one Vaishali since 2018 and one of the defence of the applicant is that it may not be believed that after living with the applicant for four years in the same city where the earlier wife was also living, the prosecutrix/victim could not know that the applicant is already married and thus, the consent of the sexual relations was given even after knowing that the applicant is already married. The applicant is

in jail in this case since 22.7.2023 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

13. 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**.

14. Let the applicant- **Dipak 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.

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

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

17. 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 :- 7.12.2023
Shravan