

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11756 of 2023

Applicant :- Vipul Verma

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

Counsel for Applicant :- Atul Dixit, Pradeep Kumar Srivastava

Counsel for Opposite Party :- G.A., Arvind Kumar Srivastava

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State is taken on record.
2. Shri Anil Dev Vikram Singh, Assistant Commissioner of Police, Vibhuti Khand, Gomti Nagar, Lucknow is personally present before this Court in pursuance of earlier order of this Court. Since the counter affidavit has already been filed and the explanation given by the Assistant Commissioner of Police with regard to the delay caused in furnishing necessary information to learned A.G.A., the same appears to be justified and is accepted. He need not appear before this Court in future unless called for.
3. Heard 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- **Vipul Verma** for grant of bail, in Case Crime No.189 of 2022, under Sections 376, 506 I.P.C., Police Station B.B.D., 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 F.I.R. of this case has been lodged by the prosecutrix herself alleging therein that she was divorced from her first husband, from whom she was also having a girl child aged about 7 years and thereafter she came in contact with the applicant and he lured her on the promise of marrying her and on 16.04.2021, he invited her to his house on the pretext of introducing her to his family members, but when she arrived at his apartment she did not find his family members and it was informed that they have gone somewhere and tea was offered

by the applicant and by drinking the same she became unconscious and in that state, obscene video and photograph was filmed by the applicant and on that pretext he committed sexual assault on her for about one year and now she came to know that he is intending to marry with some other girl and also intimidating her to make her photographs and video viral. Statements of the prosecutrix were also recorded under Sections 161 and 164 Cr.P.C., wherein she has reiterated the same version of the incident.

7. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that age of the prosecutrix is about 28 years and she was a married lady and also having a girl child and even if the story as narrated by the prosecutrix is believed, the same may only canvass a relationship of two adults and the same by any stretch of imagination may not be given the colour of sexual assault or rape.

8. Learned counsel for the applicant has also relied on the law laid down by Hon'ble Supreme Court in ***Shambhu Kharwar Vs. State of Uttar Pradesh***; 2022 SCC OnLine 1032 and ***Naim Ahamed Vs. State (NCT of Delhi)***; 2023 SCC OnLine SC 89 in order to show that a consensual activity between two adults may always not be given the colour of sexual assault committed on mistake of fact (by giving false promise of marriage)

9. It is further submitted that the story of committing sexual assault on the pretext of making her nude video and photograph viral is concocted and could not be believed as during the course of investigation no such video and photograph has been collected by the investigating officer. It is also submitted that in support of the allegation of the prosecutrix, there is only and only her untrustworthy statements.

10. It is next submitted that applicant is in jail in this case since 25.08.2023 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.

11. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that an innocent lady has been subjected to sexual assault on the pretext of making her nude video or photograph viral, which were filmed by the applicant when she was in intoxicated state as a result of some noxious substance given by the applicant in her tea 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.

12. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix was in a relationship with the applicant and on fateful day she was invited by the applicant at his apartment, where he was alone and had given some noxious substance to the prosecutrix in the tea and when she was in unconscious state of mind, he filmed obscene video and photograph and on the pretext of making them viral, he has committed sexual assault on her for about one year. The defence of the applicant appears to be that even if the story of the prosecutrix is believed as stated by her that she was in a relationship with the applicant, her conduct appears to be of a consenting party and since she was 28 years old and was also having a girl child aged about 7 years, sexual assault could not be presumed. Finer aspects of the factual matrix could only be adjudicated/appreciated by the trial court after providing an opportunity to the parties to lead the evidence. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 25.08.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions. At this juncture, having regard to all the facts and circumstances of the case and keeping in view the age of the prosecutrix and her admission in the F.I.R. as well as in her statements that she was having affair with the applicant and also keeping in view the fact that the applicant is not having any criminal history, facility of bail may be extended to the applicant.

13. 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**.

14. Let the accused/applicant- **Vipul Verma** 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.

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 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 :- 16.11.2023

Anupam S/-