

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11776 of 2023

Applicant :- Jiyauddin

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.,Ambrish Kumar Dubey

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Manoj Kumar Singh, learned counsel for the accused/applicant, Shri Juned Khan holding brief for Shri Ambrish Kumar Dubey 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- **Jiyauddin** for grant of bail, in Case Crime No. 188 of 023, under Sections 376, 313, 506 IPC and Section 3/4 POCSO Act, Police Station Jarwal Road, 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 victim herself lodged FIR on 21.7.2023 alleging therein that in the year 2019 the applicant had proposed her on which she replied that she belongs to a very poor family and his family members would not accept her on which he replied that his family is ready to solemnize his marriage with her and thereafter he had taken the victim with him to introduce his family members and thereafter on the same day and on many occasion, he cohabited with the prosecutrix/ victim by extending the promise of marriage and she also became pregnant by such sexual activity, however, the fetus was aborted by the applicant by administering some medicines to the prosecutrix. Allegations are also to the tune that family members of the applicant have also intimidated the prosecutrix and thus the prosecutrix has been sexually exploited on the pretext of false promise of marriage. In her statement recorded under Section 161 Cr.P.C. and 164 Cr.P.C. the prosecutrix has reiterated the allegations levelled in the First Information Report.

4. Highlighting the above facts, it is vehemently submitted that the age of the prosecutrix as has been disclosed by her in her

statements recorded under Sections 161 and 164 Cr.P.C. as 22 years while her date of birth as per her educational credentials is 25.04.2002 by which she at the date and time of lodging of the FIR was major and even if the allegation of cohabitation on the date and time given by the prosecutrix in the FIR is taken as it is, on that day the age of the prosecutrix would come a little less than 18 years and thus even if at that point of time she was not major but was having sufficient intellect to understand the nature of the sexual activity.

5. It is further submitted that it appears to be an admitted fact that the prosecutrix has responded in affirmative to the proposal of the marriage extended by the applicant, thus the sexual activity allegedly occurred in the year 2020 and thereafter was a consented sexual activity and the element of committing sexual assault on the pretext of false promise of marriage has been crafted afterwards in order to aggravate the offence when the relations between the victim and the applicant became strained. Reliance has been placed on the law laid down by the Hon'ble Supreme Court in the cases of ***Shambhu Kharwar vs. State of Uttar Pradesh and ors. 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***. It is submitted that there is a notable difference between the breach of promise and exploiting someone on the basis of that promise i.e. (mistake of facts). The prosecutrix has also denied to undergo any medical examination and thus there is no medical evidence in corroboration of the allegations of the prosecutrix and the untrustworthy statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. could not be believed.

6. It is further submitted that the applicant is in jail in this case since 25.07.2023 and he is not having any criminal antecedent. Charge sheet in this case 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.

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 Juned Khan holding brief for Shri Ambrish Kumar Dubey vehemently opposes the prayer of bail of the applicant on the ground that by extending false promise of marriage an innocent girl has been sexually exploited and therefore the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is transpired that the age of the prosecutrix at the date and time of lodging of the FIR was about 22 years and in 2020 whereon the first sexual activity is shown to have taken place she appears to be little less than 18 years, thus she was almost major. Allegations of committing sexual intercourse on the pretext of marrying and by extending false promise of marriage has been levelled. Learned counsel for the applicant has relied on the law laid down by the Hon'ble Supreme Court in *Shambhu Kharwar vs. State of Uttar Pradesh and ors.* 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 of the prosecution is taken on its face, it could not be believed that the consent was given by the prosecutrix under some misconception or mistake of fact and sexual activity between the applicant and prosecutrix was consensual act of the two adults which could not be given the colour of rape or sexual assault. The applicant is in jail in this case since 25.7.2023 and he is not having any criminal antecedent. 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- **Jiyauddin** 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 :- 11.10.2023

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