

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11813 of 2023

Applicant :- Akhilesh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko.

Counsel for Applicant :- Himanshu Shukla

Counsel for Opposite Party :- G.A., Pankaj Kumar

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State and supplementary affidavit filed on behalf of the applicant are taken on record.
2. Heard Shri Himanshu Shukla, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Pankaj Kumar, learned counsel for the informant/complainant and perused the record.
3. This bail application has been moved by the accused/applicant- **Akhilesh** for grant of bail, in Case Crime No.293 of 2023, under Sections 376, 323 I.P.C., Police Station Ramkot, District Sitapur, during trial.
4. 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.
5. It is further submitted that F.I.R. of this case has been lodged by the prosecutrix herself by moving an application under Section 156(3) Cr.P.C. and the allegations levelled therein have been aggravated with the help of a legal professional. It is also submitted that in the F.I.R. as well as in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., it is alleged that the prosecutrix was being sexually assaulted by the applicant on the pretext of marrying her and late on the applicant refused to marry her.
6. It is vehemently submitted on behalf of the applicant that the story as cooked up by the prosecutrix could not be believed. The prosecutrix was a widow as her husband had died earlier and she was living separately in a separate house and the applicant and the prosecutrix had inclined towards each other and the sexual relations, if any, were established between them

with free will and consent of the prosecutrix and the same could never be termed as physical assault or rape.

7. It is vehemently submitted that it is admitted to the prosecutrix especially in her statement recorded under Section 164 Cr.P.C. that the applicant was living in her house for the last five years and sexual relations were being established between them during this period, which is itself sufficient to show the consensual act of the prosecutrix and since she was major at the date and time of the alleged incident, no offence has been committed by the applicant.

8. It is next submitted that applicant is in jail in this case since 20.07.2023 and criminal history of two cases have been explained in para-3 of the supplementary affidavit dated 16.10.2023/30.11.2023, wherein applicant has been granted bail and the bail orders with regard to these cases have been placed on record. 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.

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 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.

10. Shri Pankaj Kumar, learned counsel for the informant/complainant opposes the prayer of bail of the applicant on the ground that the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has corroborated the allegations of the F.I.R. and keeping in view the fact that the prosecutrix has been sexually assaulted over a long period of time, 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 evident that the prosecutrix was major at the date and time of alleged incident. She was married earlier to another person, however, on his death, she became widow and was living separately. The allegations are with regard to commission of sexual assault by the applicant for the last five years from before lodging of the F.I.R. In her statement recorded under Section 164 Cr.P.C., it is admitted to the prosecutrix that the applicant was living in her house and sexual relations were being made by the applicant in the house of the prosecutrix. Medical report of the prosecutrix is also clean. Charge-sheet in this case has already been filed. Applicant is in

jail in this case since 20.07.2023. Criminal history of two cases has been adequately explained. 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- **Akhilesh** 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 :- 30.11.2023

Anupam S/-