

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12251 of 2023

Applicant :- Asif

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

Counsel for Applicant :- Dinesh Kr. Sharma, Arshad Hafeez Khan

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case and charge sheet in this case has been filed.

2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Asif** for grant of bail, in Case Crime No.200 of 2023, under Sections 323, 376, 452, 504, 506 I.P.C., Police Station Masauli, District Barabanki, 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 victim herself on 11.07.2023 alleging therein that for a long time, applicant is teasing her and also committing sexual assault on the pretext of marrying her and on 05.07.2023 at about 12:00 hours in the night, he entered into the house of the victim and when he was attempting to sexually assault, her mother had awoken and on seeing her, applicant fled away from her house and now he is intimidating her. The prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. has reiterated the facts as narrated in the F.I.R.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that age of the prosecutrix at the time of incident was admittedly 22 years (as disclosed by her in her statements recorded under Sections 161 and 164 Cr.P.C.) and it is admitted to her in her statements that for the last one year, applicant was talking to her and was visiting her house frequently and they were also cohabiting. Thus the prosecutrix/victim appears to be a consenting party. Elaborating

further, it is submitted that it has been specifically stated by the prosecutrix in her statements that all the three times sexual assault has been committed by the applicant on her in the her house, wherein the prosecutrix is living with her mother and it is hard to believe that on all three times the prosecutrix has not raised any alarm, thus the story as cooked up by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. is frivolous, highly concocted and could not be believed on the touchstone of probability.

7. It is further submitted that in fact the prosecutrix and the applicant were in a relationship and as they both are adults and if they were cohabiting at all, the same was the consensual act of two adults and may not attract any penal consequences and when their relations became strained, the instant F.I.R. has been lodged. Medical report of the prosecutrix is also clean and no injury or any abnormality has been noticed therein.

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 next submitted that applicant is in jail in this case since 09.08.2023 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.

10. 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.

11. Having heard learned counsel for the parties and having perused the record, it is evident that it appears to be an admitted fact that the prosecutrix was aged about 22 years at the time of alleged incident and sexual assault on the pretext of marrying her has been alleged for the last one year from before lodging of the F.I.R., however, on all the occasions, the place of sexual assault has been shown to be the house of the prosecutrix, wherein she is living with her mother. The last attempt to rape has been shown on 05.07.2023, however, it is stated that the applicant could not succeed in his efforts as the prosecutrix had

raised an alarm and her mother had awoken. The applicant has claimed relationship with the prosecutrix and his defence is that when their relationship became strained, the instant F.I.R. has been lodged otherwise they were cohabiting with free wish and will of the prosecutrix and as she was aged about 22 years, it is submitted with considerable force that no penal consequences may be attracted against the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 09.08.2023 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- **Asif** 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 :- 16.10.2023
Anupam S/-