

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12233 of 2023

Applicant :- Digvijay Singh Rathore

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

Counsel for Applicant :- Anurag Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. It is informed by learned A.G.A. that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.
3. Heard Shri Anurag Kumar Singh, 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- **Digvijay Singh Rathore** for grant of bail, in F.I.R./Crime No. 0400 of 2023, under Section 376 and 506 I.P.C., Police Station Chinhath, District Lucknow, during trial.
5. Learned counsel for the accused-applicant while drawing the attention of this Court towards the first information report, submits that the applicant has been falsely implicated in this case. The first information report has been lodged with a considerable delay of five months while the incident is stated to have occurred on 10.04.2023.
6. It is further submitted that the victim who has lodged the first information report, has admitted in the F.I.R. lodged by her as well as in her statements that she was in contact with the applicant since 25-26.03.2023 and on 10.04.2023 she had allegedly gone to the residence of the applicant, as she was informed by the applicant that he is ill. However, on being insisted, she went there but he (applicant) established sexual relations with her against her will and persuaded her that he will solemnize marriage with him. However, thereafter he started ignoring her and thereafter he moved an application at Police Station Mahangar, Lucknow where a compromise had taken place. However, he did not comply the terms and thereafter his family members started intimidating her and after taking time

on various reasons ultimately the marriage of the applicant could not be solemnized with the applicant.

7. Highlighting the above facts, it is vehemently submitted by learned counsel for the applicant that even if the contention of the applicant, as is emerging from the F.I.R. and his statements recorded under Section 161 and 164 Cr.P.C. are believed, she appears to be a consenting party, as according to her own version of the incident, she had gone to the room of the applicant and thereafter did not make any complaint immediately and it was after some strained relations occurred between them, the complaint was made by her. Elaborating further, it is submitted that after making a false complaint, as has been admitted by the victim/informant in the first information report, a compromise had taken place between the informant and applicant, wherein it was stipulated that the prosecutrix and applicant shall continue to remain in relationship and the first party (informant/victim) will not commit any cruelty with the second party (applicant), a photocopy of this compromise has also been brought on record.

8. Attention of this Court is also drawn towards a complaint made by the prosecutrix on 28.06.2023 at I.G.R.S. Portal. However, she has given in writing to the S.H.O. of the Police Station Chinhat, Lucknow that she doesn't want any action on this complaint. A copy of the complaint as well as the request made to the S.H.O. of Police Station Chinhat in writing has been placed as Annexure No.3 and 4 to the bail application.

9. It is also submitted that even after filing of two complaints and making compromise in one and asking the concerned S.H.O. not to take any action on her second complaint another complaint was filed by the informant/victim, however, the same has been disposed of by giving a report, which has been placed as Annexure No.5, by the concerned police station, wherein the compromise made by the informant/victim earlier pertaining to two earlier complaints has been highlighted.

10. Attention of this Court is also drawn towards a copy/extract of the whatsapp chat allegedly occurred between the applicant and informant in order to show that the prosecutrix was a consenting party and she was pressurizing the applicant to solemnize marriage. It is vehemently submitted that the age of the prosecutrix is admittedly 25 years (as stated by her in F.I.R., in her statements recorded under Section 161 and 164 Cr.P.C.). Thus, she was major at the date and time of the incident and she has admitted in writing not to commit any cruelty with the applicant in a compromise occurred on 15.04.2023 in the Police Station Mahanagar, which has also been acknowledged by the

informant/victim in the F.I.R. and there was no element of sexual assault or making sexual relations on the pretext of false promise of marriage and even if there was cohabitation the same was a 'consensual act' of the applicant and informant/prosecutrix and the same by any stretch of imagination may not be termed as sexual assault or rape and it is only on account of the fact that the prosecutrix failed to pressurized the applicant to solemnize marriage, the instant F.I.R. has been lodged.

11. It is next submitted that applicant is a student of B.B.A. and is in jail in this case since 11.09.2023 and he is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

12. Learned counsel for the applicant has also placed reliance 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].

13. 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, therefore, he is not entitled to be released on bail.

14. Having heard learned counsel for the parties and having perused the record, it is transpired that the prosecutrix in the first information report has admitted to have made a compromise on 15.04.2023 pertaining to the complaint made by her at Police Station Mahanagar, a copy of the said compromise has been brought on record by the applicant, perusal of which, would reveal that a compromise had arrived between the parties and it was agreed that they will continue in the relationship, as they were before establishing sexual relations and the first party (informant) will not commit any cruelty with the second party (applicant). Thereafter another complaint appears to have been filed by the prosecutrix/informant. However, she had requested the S.H.O., Chinhath in writing not to take any action on that complaint and the said request in writing has also been brought on record as Annexure No.4 to the bail application. Admittedly the prosecutrix is aged about 25 years and she was major at the time of the alleged incident. Various submissions have been raised on behalf of the applicant in order to show that prosecutrix was a 'consenting party' and lodging of the first information report is the outcome of strained relationship and the same is not having any element of sexual assault or rape.

Reliance in this regard has also been placed on '*Shambhu Kharwar vs. State of U.P.*' (*supra*) and '*Naim Ahmed vs. State (NCT of Delhi)*' (*supra*). Applicant is languishing in jail in this case since 11.09.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

15. 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**.

16. Let the accused/applicant- **Digvijay Singh Rathore** 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 contact the prosecutrix, directly, indirectly or through any social media platforms and shall not place her picture on his social messenger's status.**

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

19. 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 on the merits of the case.

Order Date :- 13.10.2023/Praveen