

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12366 of 2023

Applicant :- Sudhir Verma

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

Counsel for Applicant :- Verender Kumar Tiwari, Vinayak Tiwari

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 the charge sheet in this case has been filed.
2. Heard Shri Verender Kumar Tiwari, 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- **Sudhir Verma** for grant of bail, in Case Crime No.0297 of 2023, under Sections 376 I.P.C. and 2/4 of the Dowry Prohibition Act, Police Station Chinhat, District Lucknow, 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 none other than the prosecutrix herself, wherein it is alleged that for the last ten years, the prosecutrix is acquainted to the applicant as they first met in a computer class and thereafter the applicant had called her at his room and by intoxicating her physical relation was made with her and the sexual activity was also filmed and on the basis of such pictures and video, the applicant started blackmailing her and on the pretext of making the video and pictures public, physical relations were made by him on various occasions. It is further stated that when the prosecutrix refused to toe the line of the applicant, he proposed to marry her and on the basis of promise of marrying her, he called her in a hotel and again made sexual relations against the will of the prosecutrix and thereafter when she

(informant/prosecutrix) went to the house of the applicant, his parents demanded Rs.16 lakhs and a vehicle along with jewellery. Her parents refused to pay dowry having regard to their financial conditions on which the parents of the applicant informed that marriage could only be solemnized when their demand would be fulfilled. The allegations as stated in the F.I.R. have been reiterated by the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. and the medical report of the prosecutrix is clean.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the allegations of making sexual relations for the first time after administering some noxious substance to the prosecutrix is patently absurd, concocted and could not be believed as no prudent person can believe that for the last ten years from before the lodging of the F.I.R., sexual relations were being made by the applicant with the prosecutrix and she did not make any complaint to any public authority and the fact is that the applicant and the prosecutrix were in a relationship and they remained in that relationship for ten long years and there was no element of any promise of marriage as stated by the prosecutrix.

7. Attention of this Court in this regard has been drawn on the statement of the father of the prosecutrix recorded by the investigating officer, wherein it is stated that the prosecutrix was in love with the applicant and she wanted to marry him and it is on this score, she established sexual relations and he (father of the prosecutrix) persuaded her (victim) not to take any action as both of them were at fault, however, she has lodged this F.I.R.

8. It is further submitted that the prosecutrix for the last many years was pressurizing the applicant to marry her whereas no such agreement had taken place between them while entering into a relationship and in this regard a written complaint of date 08.06.2023 was moved by her before the Station House Officer, Police Station Dewa, District Barabanki and inquiry report in this regard prepared by the Chowki Incharge, Mati, Police Station Dewa, District Barabanki is placed on record, wherein it is stated that the prosecutrix is pressurizing the applicant to solemnize marriage with her and the allegation appears to be suspicious.

9. Attention of this Court has also been drawn on an application given by the victim on 20.06.2023 to the Station House Officer, Police Station Dewa, District Barabanki, a copy of which has also been placed at page no.46 and has also been referred in the inquiry report prepared by the Chowki Incharge, Mati, Police

Statio Dewa, District Barabanki, whereby the prosecutrix requested that she does not want to press the complaint made against the applicant.

10. It is further submitted that in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., she has stated her age to be of 31 years, thus even if the incident of 10 years before lodging of the F.I.R. is believed for the sake of argument at that time also the prosecutrix was major and since she was a consenting, no offence in fact has been committed by the applicant.

11. 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 sexual 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).

12. It is next submitted that applicant is in jail in this case since 12.07.2023 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.

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 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.

14. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix is about 31 years as admitted by her in her statement recorded under Sections 161 and 164 Cr.P.C. The first incident of sexual assault is shown to have occurred, according to the prosecutrix, about ten years ago from before lodging of the F.I.R. Admittedly no complaint has been made in these ten long years except one which has been made on 08.06.2023. The statement of the parents of the prosecutrix appears to be significant, whereby an inference may be drawn, though prima facie, that the prosecutrix and the applicant were in a relationship. This inference is further fortified by the narration of the incident by the prosecutrix to the Doctor while she was under medical examination. Statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. is also to the tune that after the

occurrence of first sexual assault they were meeting, cohabiting as a false promise of marriage was extended and also on the basis of intimidation given by the applicant and on the basis of making some obscene photographs and videos possessed by him (applicant) viral, however, no video or photograph has been recovered by the investigating officer during the course of investigation. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 12.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

15. 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**.

16. Let the accused/applicant- **Sudhir 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.

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 of this Court on the merits of the case.

Order Date :- 18.10.2023
Anupam S/-