

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12367 of 2023

Applicant :- Vasik Khan

Opposite Party :- State Of U.P. Thru. Addl. Prin. Secy. Home Deptt. Lucknow And Another

Counsel for Applicant :- Ajmal Khan, Javed Khan

Counsel for Opposite Party :- G.A., Shravan Kumar Upadhyay

Hon'ble Mohd. Faiz Alam Khan, J.

1. Shri Dev Mani Mishra has filed his Vakalatnama/ power on behalf of opposite party no.2, which is taken on record. He requested that some time be granted for the purpose of filing counter affidavit/ objection.
2. Perusal of the record would reveal that on 18.10.2023 Shri Shravan Kumar Upadhyaya has filed his Vakalatnama on behalf of opposite party no.2/ complainant and having regard to the facts and circumstances of the case he was given time to file counter affidavit till today with clear stipulation that no further time for this purpose shall be granted to the opposite party no.2/ complainant.
3. Today when Vakalatnama / power has been filed by Shri Dev Mani Mishra 'No Objection' has been given by Shri Shravan Kumar Upadhyaya and no justifiable explanation has been given for not filing the counter affidavit/ objection.
4. In view of this, the request of learned counsel for the opposite party no.2/ complainant for not filing counter affidavit/ objection appears to be not bonafied and is hereby rejected.
5. Heard Shri Ajmal Khan, learned counsel for the accused/applicant as well as learned A.G.A. for the State and Shri Dev Mani Mishra, learned counsel for the opposite party no.2/ complainant and perused the record.
6. This bail application has been moved by the accused/applicant- **Vasik Khan** for grant of bail, in Case Crime No. 455 of 2023, under Sections 376, 406 IPC, Police Station Kotwali City, District Pratapgarh, during trial.
7. Learned counsel for the accused-applicant while pressing the

bail application submits that it is a case of false implication. The FIR of the incident was lodged by the prosecutrix herself alleging therein that the applicant used to chase the prosecutrix when she used to go to attend the School. However, thereafter he had established friendship with her and they also started meeting at various restaurants, in the meantime the prosecutrix got some job at New Delhi and started living at Delhi, where the applicant started making calls to her and after extending false promise of marriage has made sexual relations with her and have also recorded video calls and screen shots of obscene photographs and videos, it is also stated that she has been defrauded of Rs. 2,50,000/- by the applicant and in this way the applicant has sexually exploited the prosecutrix. The contents of the FIR has been corroborated by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C.

8. While drawing the attention of this Court towards the age of the prosecutrix, it is submitted that the age of the prosecutrix was admittedly 26 years as stated by her in her statements recorded under Sections 161 and 164 Cr.P.C. It is admitted by her that she was in a relationship with the applicant and they were cohabiting also. It is vehemently submitted that cohabitation and establishing sexual relations with the applicant was a consensual act of two adults and may not be termed as sexual assault or rape. Reliance has been placed in this regard 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 when two adults have consented to make sexual relations the establishment of such relation may always not be termed as rape or sexual assault and so far as this case is concerned, the theory of false promise of marriage could also not be believed as no such promise was extended by the applicant and this allegation has been crafted subsequently in order to aggravate the facts of the case.

9. It is further submitted that the applicant is in jail in this case since 22.07.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted 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.

10. Learned A.G.A. on the other hand submits that the applicant is accused of committing heinous offence, therefore, he is not entitled to be released on bail.

11. Shri Dev Mani Mishra, learned counsel for opposite party no.2/ complainant vehemently opposed the prayer of bail of the applicant on the ground that the applicant is an accused of committing heinous offence and consent of the applicant has been obtained by extending false promise of marriage and the career of younger girl has been ruined, therefore, he is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix is admittedly about 26 years and thus at the time of alleged offence the prosecutrix was major. Allegations have been levelled of sexual exploiting the prosecutrix on the pretext of marrying her, the same has been disputed by learned counsel for the applicant and the defence of the applicant appears to be a cohabitation and sexual relations established between the applicant and the prosecutrix were the 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 22.7.2023 and he is not having any criminal antecedent. His presence may be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the applicant- **Vasik Khan** 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.

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

16. Identity, status and residence proof of the applicant and

sureties be verified by the court concerned before the bonds are accepted.

17. 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 :- 31.10.2023

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