

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12607 of 2023

Applicant :- Abdul Jakir

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

Counsel for Applicant :- Sumit Chauhan

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.

2. Heard Shri Sumit Chauhan, 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- **Abdul Jakir** for grant of bail, in Case Crime No.0278 of 2023, under Sections 376, 323 I.P.C., Police Station Fakharpur, District Bahraich, 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 08.07.2023 at Police Station Fakharpur, District Bahraich alleging that she was on talking terms with the applicant and on 05.07.2023, he came to her house and started molesting her and on an alarm raised by her, he fled away from the house.

6. It is vehemently submitted on behalf of the applicant that in the F.I.R, which has been lodged on a written application given by the prosecutrix, there is no whisper about commission of rape and subsequently in her statement recorded under Sections 161 and 164 Cr.P.C., the prosecutrix had developed a new case of exploiting her sexually on the pretext of false promise of marriage. Elaborating further, it is submitted that the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. had admitted that sexual relation was made by the applicant with her consent as she was willing to marry the

applicant and was having a relationship with him for the last 2 and half years.

7. It is vehemently submitted that even if the case of the prosecution as is emerging from the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. is taken on its face, it will emerge that sexual relations between the applicant and the victim were consensual and there is no element of making sexual relation on the pretext of false promise of marriage. It is also submitted that it could not be believed by any prudent person that the applicant, who is aged about 21 years, would lure a woman of the age of 55 years and therefore, the story pertaining to the false promise of marriage has been carved out subsequently. There is no abnormality in the medical examination report of the prosecutrix.

8. It is next submitted that applicant is in jail in this case since 08.08.2023 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.

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. Having heard learned counsel for the parties and having perused the record, it is evident that age of the applicant is stated to be 21 years while the prosecutrix/victim in her statement recorded under Sections 161 and 164 Cr.P.C. has stated her age about 32 years. The F.I.R., which has been lodged on a written application given by the prosecutrix, is confined to the allegation of molestation and there is no whisper so far as the commission of rape is concerned. However, in her statement recorded under Sections 161 and 164 Cr.P.C., the prosecutrix has stated about making of sexual relations on the pretext of extending false promise of marriage, however, it is admitted by her that she wanted to marry the applicant and was in his relationship for the last 2 and half years and it is in this background, it is submitted on behalf of the applicant that it is a case of consensus relationship and the prosecutrix was of consenting age. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 08.08.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. 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**.

12. Let the accused/applicant- **Abdul Jakir** 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.

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

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

15. 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 :- 27.10.2023

Anupam S/-