

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13195 of 2023

Applicant :- Nikhil Yadav

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home, Lucknow

Counsel for Applicant :- Ravindra Kumar Yadav, Ajeet Singh

Counsel for Opposite Party :- G.A., Piyush Tripathi, Vikas Yadav

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the complainant and supplementary affidavit filed on behalf of the applicant are taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Piyush Tripathi, learned counsel for the informant/complainant and perused the record.
4. This bail application has been moved by the accused/applicant- **Nikhil Yadav** for grant of bail, in Case Crime No.239 of 2023, under Sections 376, 506 I.P.C., Police Station Alapur, District Ambedkar Nagar, during trial.
5. 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.
6. It is further submitted that F.I.R. of this case has been lodged by the prosecutrix herself alleging that prior to her marriage with one Arjun Goswami, she was in a relationship with the applicant, however, the applicant had posted some obscene photographs of her on the mobile phone of her family members due to which her matrimonial life had broken and thereafter she is living in the house of her father. It is also alleged that sexual relations were established by the applicant on the pretext of making some obscene photographs of the prosecutrix viral. The prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. has corroborated the allegations of the F.I.R.

7. While drawing attention of this Court towards the F.I.R. as well as the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. it is vehemently submitted on behalf of the applicant that it is admitted to the prosecutrix that before her marriage with one Arjun Goswami, she was in a relationship with the applicant and they were also cohabiting but nothing has been provided to the investigating officer or has been given otherwise collected by the investigating agency, which may suggest that any video or photograph etc. has been posted by the applicant anywhere or has been forwarded to the family members of the prosecutrix.

8. It is further submitted that from before her marriage and even after her marriage with Arjun Goswami, the prosecutrix was in a relationship with the applicant and they were frequently cohabiting and she for a very long time is living at the house of her father and sexual relations were made by her with the applicant with her free wish and consent and as she was major at the date and time of the alleged incident, no offence in fact has been committed by the applicant.

9. Attention of this Court has also been drawn on Annexure Nos.8 and 9, which are report with regard to the I.G.R.S. complaint made by the prosecutrix and compromise allegedly taken place between the prosecutrix and her husband Arjun Goswami in order to show that the prosecutrix was living separately from her husband as they could not maintain cordial relations and story as cooked up by the prosecutrix of being separated on account of photographs being given or forwarded by the applicant is false and could not be believed.

10. It is next submitted that applicant is in jail in this case since 25.08.2023 and criminal history of four cases have been explained in paragraph no.13 of the bail application and paragraph nos.2 and 4 of the supplementary affidavit filed today. 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.

11. 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.

12. Shri Piyush Tripathi, learned counsel for the informant/complainant vehemently opposes the prayer of bail

of the applicant on the ground that matrimonial life of the prosecutrix has been ruined by the applicant by sending obscene photographs to her husband and other family members and he also made sexual relations on the intimidation that he will make obscene photographs of the prosecutrix viral and therefore, the applicant is not entitled to be released on bail.

13. Having heard learned counsel for the parties and having perused the record, it is evident that the allegations have been levelled of sending some obscene photographs to the husband and other family members of the prosecutrix by which the matrimonial life of the prosecutrix was deteriorated and it is on account of this her marriage was broken. The defence of the applicant appears to be that during the course of investigation no such photograph etc. has been retrieved or collected by the investigating officer and also that the prosecutrix admittedly was in a relationship with the applicant before her marriage and thereafter also she remained in his relationship and they were cohabiting frequently. Admittedly the prosecutrix was major at the date and time of the alleged incident. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 25.08.2023. Criminal history of four cases have been adequately explained. The presence of the applicant could be secured before the trial court by placing adequate conditions.

14. 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**.

15. Let the accused/applicant- **Nikhil Yadav** 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.

16. In case of breach of any of the above conditions, it shall be

a ground for cancellation of bail.

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

18. 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 :- 9.11.2023

Anupam S/-