

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15363 of 2022

Applicant :- Rohit Vishwakarma

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

Counsel for Applicant :- Bhoopal Singh,Afrin Bano,Arun Singh,Manjusha Kapil

Counsel for Opposite Party :- G.A.,Amit Kumar Singh,Manoj Kumar Yadav

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Mr. Mukul Rakesh, learned Senior Counsel, assisted by Mr. Arun Singh, Advocate appearing for the accused-applicant, learned A.G.A. for the State as well as Mr. Manoj Kumar Yadav, learned counsel for the complainant/informant and perused the record.

2. This bail application has been moved by the accused/applicant- **Rohit Vishwakarma** for grant of bail in Case Crime No.0236 of 2022, under Sections 376 and 504 IPC lodged at Police Station Gomti Nagar, District Lucknow, during trial.

3. Learned Senior Counsel appearing for the accused-applicant, while drawing attention of this Court towards the FIR as well as statements of the prosecutrix/victim recorded under Sections 161 and 164 CrPC, submits that it is a case of false implication and even if the case, as projected by the victim in her statements recorded under Sections 161 and 164 CrPC, is taken on its face, it would emerge that the prosecutrix is aged about 38 years and she is also having a child and the applicant aged about 21 years was visiting her home in connection with giving tuition to her child and thereafter they developed intimacy and had entered into a relationship and the prosecutrix had gone to various places with the applicant where also they cohabited. It is vehemently submitted that even if the sexual relations were established between the applicant and the prosecutrix, the same were with the consent and free-will of the prosecutrix and it may not be termed as sexual assault or rape having regard to the fact that the prosecutrix was major and was of 38 years of age at the date and time of the alleged incident and the applicant is 21 years of age. It is further submitted that the applicant is languishing in jail in this case since 16.10.2022 and the trial, having regard to pendency before the trial Court, is not going to

conclude in near future and he is not having any previous 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.

4. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and, therefore, he is not entitled to be released on bail.

5. Learned counsel for the complainant/informant vehemently opposes that bail plea of the applicant on the ground that the applicant has not only established sexual relations with the prosecutrix but also committed a breach of trust as being in relationship with the informant he was simultaneously dating the other girls and, therefore, he is not entitled to be enlarged on bail. It is also submitted that the brothers of the applicant are intimidating the prosecutrix and her family members

6. Having heard learned counsel for the parties and having perused the record, it is reflected from the FIR as well as from statements of the prosecutrix recorded under Sections 161 and 164 CrPC that the prosecutrix and the applicant were in relationship. It has been highlighted by the learned Senior Counsel appearing on behalf of the applicant that even if the prosecution story is believed as it is, there was no commitment or any promise extended by the applicant to marry prosecutrix and since the prosecutrix is aged around 38 years and the applicant at the relevant time was aged about 21 years, the relationship between them was a relationship between two adults and, if any sexual relation has been established between them, the same would not be termed as sexual assault or rape, as the prosecutrix was a consenting party. Various 'WhatsApp' chats have also been highlighted in order to show that the prosecutrix was a consenting party. The applicant is languishing in jail in this case since 16.10.2022 without any previous 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.

7. 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**.

8. Let the accused/applicant-**Rohit Vishwakarma**, 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 make any contact with the prosecutrix, either directly or indirectly or through any social platform and, in this regard, file a written undertaking before the trial Court.

(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.

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

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

11. 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 8.11.2023

MVS/-