

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13390 of 2023

Applicant :- Durgesh Kumar Gautam @ Dipu @ Durgesh

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

Counsel for Applicant :- Atul Verma, Akhilendra Pratap Singh, Himanshu Tiwari, Vinod Kumar Yadav

Counsel for Opposite Party :- G.A., Dharmendra Kumar Gupta, Kaushal Kishore

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the informant/complainant is taken on record.
2. Heard Shri Atul Verma, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Kaushal Kishore Verma, learned counsel for the informant/complainant and perused the record.
3. This bail application has been moved by the accused/applicant- **Durgesh Kumar Gautam @ Dipu @ Durgesh** for grant of bail, in Case Crime No.343 of 2023, under Sections 376, 504, 506 I.P.C. and Section 4 of the Dowry Prohibition Act, Police Station Gosaiganj, 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 allegations of the F.I.R. as well as in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. could not be believed on the touchstone of probability. The prosecutrix in the F.I.R. as well as in her statements recorded under Sections 161 and 164 Cr.P.C. had alleged that she was having affair with the applicant for the last 10 years from before lodging of the F.I.R. and in these 10 years, cohabitation had taken place between them many times and she also got pregnant on various occasions, however, the pregnancy was terminated on account of some medicine administered by the applicant and now when the applicant had got a government job, he started making distance with the prosecutrix and when

she insisted to marry, he had demanded Rs.30 lakh, four wheeler and some jewellery. It is also alleged that a contract was also signed between them with regard to the marriage. The prosecutrix has reiterated the contents of the F.I.R. in her statements recorded under Sections 161 and 164 Cr.P.C.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that age of the prosecutrix is about 28 years as is evident from the age shown in the medical report of the prosecutrix and she has admitted to be in a relationship with the applicant for the last 10 years from before lodging of the F.I.R. and even if the averments made by the prosecutrix are taken on its face, it would emerge that the applicant and the prosecutrix are/were adults and if they were cohabiting, the same is consensual act of two adults and by any stretch of imagination, the same may not be given the colour of rape.

7. Reliance has been made by learned counsel for the applicant on the law laid down by Hon'ble Supreme Court in ***Shambhu Kharwar Vs. State of Uttar Pradesh***; 2022 SCC OnLine 1032, ***Naim Ahamed Vs. State (NCT of Delhi)***; 2023 SCC OnLine SC 89 and ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another***; (2019) 11 S.C.R. 423.

8. It is further submitted that there is no evidence collected by the investigating officer with regard to the pregnancy of the prosecutrix or termination of the same. All the allegations, which have been levelled by the prosecutrix, are in the realm of hypothesis and the same could not be believed on the touchstone of probability.

9. It is next submitted that applicant is in jail in this case since 04.08.2023 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.

10. 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.

11. Shri Kaushal Kishore Verma, learned counsel for the informant/complainant vehemently opposes the prayer of bail of the applicant on the ground that an innocent lady has been subjected to sexual assault for a long time on the pretext of false promise of marriage and having regard to the material/evidence

available against the applicant, he is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it is evident that it is admitted to the prosecutrix that for the last 10 years from before lodging of the F.I.R., she was in a relationship with the applicant. It is also admitted that they were cohabiting frequently. It is also admitted that by such cohabitation, she also becomes pregnant and the pregnancy was aborted more than twice and there is no evidence tendered by the prosecutrix or collected by the investigating officer pertaining to the conception or termination of the pregnancy by the prosecutrix. Reliance has been placed by learned counsel for the applicant on the law laid down by Hon'ble Supreme Court in ***Shambhu Kharwar (supra)***, ***Naim Ahamed (supra)*** and ***Pramod Suryabhan Pawar (supra)*** in order to show that there has to be some logical reason available to the prosecutrix to act upon any promise of marriage. Various submissions have been raised by learned counsel for the applicant in order to show that the prosecutrix was a consenting party and as she was major, sexual assault may not be alleged against the applicant as the same could only be termed as a consensual act of two adults. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 04.08.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the accused/applicant- **Durgesh Kumar Gautam @ Dipu @ Durgesh** 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.

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 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 :- 16.11.2023

Anupam S/-