

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 13781 of 2023

**Applicant :-** Ram Shankar Upadhyay

**Opposite Party :-** The State Of U.P. Thru. The Prin. Secy. Deptt. Of Home, U.P. Lucknow

**Counsel for Applicant :-** Firoz Ahmad Khan

**Counsel for Opposite Party :-** G.A., Sudhakar Mishra

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Rejoinder affidavit filed on behalf of the State is taken on record.
2. Heard Shri Firoz Ahmad Khan, learned counsel for the accused/applicant, Shri Sudhakar Mishra, learned counsel for the informant/ complainant 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- **Ram Shankar Upadhyay** for grant of bail, in Case Crime No. 353/2023, under Sections 376, 506 IPC, Police Station Kotwali Nagar, District Faizabad/ Ayodhya, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the FIR which has been lodged by the prosecutrix herself, it is stated that she came in contact with the applicant on 6.8.2020 as she had gone to the State Ayurvedic Hospital, Anand Nagar, Bhitari, Ayodhya, wherein the applicant was working as pharmacist and thereafter she was asked by the applicant to come to his clinic and there some noxious substance was given to her by the applicant, whereby she became unconscious and in that state, sexual assault was committed by the applicant and a video was also filmed and thereafter on the pretext of making that video viral, she was being continuously sexually assaulted and in the meantime she also became pregnant and the fetus was aborted by some medicines given by the applicant and she is being treated for that till now. Allegations have also been levelled that Rs. 2 lacs were taken by the applicant which have not been returned. The allegations have been further forfeited by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C.

5. Highlighting the above facts, it is submitted that the story as narrated by prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. as well as in the FIR is false, concocted and could not be believed on the touch stone of probability.

6. It is further submitted that even if the statements of the prosecutrix are taken on its face, it will emerge that she was major at the date and time of the incident and was living separately from her husband and was a consenting party to the sexual relations established between them.

7. Elaborating further, it is submitted that the allegation of obtaining consent of the prosecutrix on the pretext of marrying her could also not be believed in view of the law laid down by the Hon'ble Supreme Court in the cases of **Shambhu Kharwar vs. State of Uttar Pradesh 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** as the prosecutrix was admittedly not divorced and there was no occasion for her to have believed the proposal of the marriage allegedly extended by the applicant as in any case the marriage could only be solemnized after she is divorced from her earlier husband.

8. It is further submitted that the applicant is in jail in this case since 14.8.2023 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. The medical reports of the prosecutrix are also clean.

9. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

10. Shri Sudhakar Mishra, learned counsel for the complainant/informant vehemently opposes the prayer of bail of the applicant. By referring to various documents enclosed with the counter affidavit filed on behalf of the prosecutrix, it is submitted that the abnormality which has occurred due to administration of some noxious drug by the applicant is still being treated in hospitals and therefore having regard to the fact that a woman has been sexually assaulted on the false promise of marriage, the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having

perused the record, it is reflected that the age of the prosecutrix on the date of the alleged occurrence was 35 years. She was admittedly married and due to strained relations with her husband was living separately. Allegations are to the tune that by extending false promise of marriage, sexual intercourse has been committed by the applicant for a long time. The defence of the applicant appears to be that there was no occasion for the applicant to have believed the alleged promise of marriage extended by the applicant as she was not divorced by her husband and her marriage with the applicant could not be solemnized without getting divorce from her husband. Reference in this regard has been made in the law laid down by Hon'ble Supreme Court in the case of **Shambhu Kharwar vs. State of Uttar Pradesh and Naim Ahamed vs. State(NCT of Delhi)**. The defence of the applicant also appears to be that the prosecutrix was major and was a consenting party. The applicant is in jail in this case since 14.8.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the applicant- **Ram Shankar Upadhyay** 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.

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

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

16. 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 :- 20.12.2023**

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