

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14050 of 2023

Applicant :- Afzal Ahmad

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. It is informed by learned A.G.A. that she has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.
2. Heard Shri Manoj Kumar Singh, 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-**Afzal Ahmad** for grant of bail, in Case Crime No. 432 of 2023, under Sections 376, 504 and 506 I.P.C., Police Station Kotwali Nanpara, District Bahraich, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by none other than the victim/prosecutrix herself on 02.08.2023 alleging for the last one year the applicant is molesting her on the pretext of extending false promise of marriage and on 19.07.2023 at about 8:00 pm. he called her to a cold storage and molested her also made a promise that he will marry her, but when the prosecutrix asked her to marry he and his family members humiliated her and also ousted her from their house and also intimidated her and her family members. The statement of the prosecutrix was also recorded under Section 161 and 164 Cr.P.C.
5. While referring to the statement of the prosecutrix/victim recorded under Section 161 and 164 Cr.P.C., it is vehemently submitted that the F.I.R. has been lodged on the basis of a written application given by the prosecutrix in the concerned police station and there is no whisper therein about the commission of rape and the allegations are confined only to the molestation.

6. It is also submitted that in her statements recorded under Section 161 and 164 Cr.P.C. a new case has been developed by the prosecutrix, wherein she stated that for the last eight years she was being molested by the applicant and he was keeping her as his wife and has also promised her to marry and on 19.07.2023 he again committed sexual assault on her and on the same day she came to know that the applicant is intending to solemnize her marriage with someone else.

7. It is vehemently submitted that the improvements made by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. could not be believed in the background of the first information report which was lodged on the basis of a written application moved by her and it appears that after 12-13 days of recording of her statement under Section 161 Cr.P.C., she under the influence of her family members has developed a new case, which was not cited in the first information report.

8. While drawing the attention of this Court towards Para No.19 of the bail application, it is submitted that for the last one year from lodging of the first information report the applicant was having relationship with the prosecutrix, however, there was no promise of marriage ever extended by the applicant and since the prosecutrix was aged about 21 years at the date and time of the incident and she was a consenting party, no offence in fact has been committed by the applicant. Reliance in this regard has also been placed by learned counsel for the applicant on the law laid down by the Hon'ble Supreme Court in the cases of '**Shambhu Kharwar vs. State of U.P.**', [2022 SCC OnLine SC 1032] and '**Naim Ahmed vs. State (NCT of Delhi)**', [2023 SCC OnLine SC 89].

9. It is next submitted that applicant is languishing in jail in this case since 25.10.2023 and he is not having any 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.

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, therefore, he is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix has been assessed through radio-logical process as 21 years. She in her statement recorded under Section 164 Cr.P.C. has also stated her age to be of 21 years at the date and time of the incident. In the first information report, which has been lodged

by the prosecutrix by moving a written application there is no allegation with regard to the commission of rape. However, in her statements recorded under Section 161 and 164 Cr.P.C., she appears to have developed the case of sexual assault (rape). It appears to be an admitted fact to the prosecutrix that she was in a relationship with the applicant, however, there appears contradictions with regard to the length of relationship, as in the first information report, it is stated that she was in a relationship with the applicant for the last one year while in her statement recorded under Section 164 Cr.P.C., she stated to be in relationship with the applicant for the last eight years. The medical report of the prosecutrix appears to be clean. The defence of the applicant is that even if the allegations levelled by the prosecutrix are taken as it is, she was a consenting party and since she was major, no penal consequences may be attached with any sexual activity which had taken place between the applicant and prosecutrix. Applicant is languishing in jail in this case since 25.10.2023 without any 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.

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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

13. Let the accused/applicant- **Afzal Ahmad** 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.

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 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.

Order Date :- 29.11.2023

Praveen