

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14349 of 2023

Applicant :- Salman

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

Counsel for Applicant :- Km.Rachna Mishra, Anil Kumar Verma, Faiz Ali Khan, Mohammad Sohail Khan, Vimlesh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed on behalf of the applicant is 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 and perused the record.
4. This bail application has been moved by the accused/applicant- **Salman** for grant of bail, in Case Crime No.366 of 2023, under Sections 376, 506 I.P.C., Police Station Krishna Nagar, District Lucknow, 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 on 19.09.2023 at Police Station Krishna Nagar, District Lucknow alleging therein that her age is 21 years and she is educated upto B.A. and on 23.08.2023, she was made unconscious by the applicant by giving some intoxicating substance in cold drink and she was taken to Bangalore by air and there she was sexually assaulted by the applicant and was also brought back to Bahraich and he had also obtained her signatures on plain papers, however, under the persuasion given by his family members, the applicant agreed to left her home, but thereafter he again intoxicated her and had taken to Bangalore again, where she was again raped and thereafter she booked an airplane ticket and returned back. The

allegations have been reiterated by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C.

7. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the story as cooked up by the prosecutrix is highly improbable, concocted and could not be believed. The true facts are that the applicant and the prosecutrix were having affair and they decided to live together and it is in this furtherance, they had gone to Bangalore and if any sexual relations were established between them, the same would be with free wish and consent of the prosecutrix and since she was a consenting party and was admittedly of the age of 21 years at the date and time of the alleged incident, in fact no offence has been committed by the applicant.

8. Elaborating further, while drawing attention of this Court towards a copy of marriage agreement placed as Annexure No.2 to the bail application, it is vehemently submitted that the prosecutrix herself signed this contract with her free will and consent and now she appears to be not interested in taking any further the relationship, which was existing between the applicant and her.

9. It is further submitted that the consent of the prosecutrix may be evidently inferred from her conduct of accompanying the applicant to Bangalore and thereafter in returning to Bahraich and again going to Bangalore through flight and it could not be presumed that anyone may travel in intoxicated state through air and thus the story cooked up by victim is false, concocted and could not be believed.

10. It is next submitted that applicant is in jail in this case since 05.10.2023 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.

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. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix as per her educational credentials is admittedly 21 years. Various instances have been shown by learned counsel for the applicant including travelling of the prosecutrix with applicant through

air to Bangalore and coming back to Bahraich and again going to Bangalore and residing with the applicant in order to show that the prosecutrix was a consenting party and she was having so many opportunities and occasions to resist and story of intoxication is highly improbable and could not be believed. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 05.10.2023 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- **Salman** 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 :- 11.12.2023

Anupam S/-