

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14392 of 2023

Applicant :- Vishal Kashyap

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

Counsel for Applicant :- Rajendra Pratap Singh,Jyoti Singh,Surendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case and charge sheet in this case has been filed.
2. Heard 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- **Vishal Kashyap** for grant of bail, in Case Crime No.308 of 2023, under Sections 376-D, 506, 34, 120-B I.P.C., Police Station Ashiyana, 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 F.I.R. of this case has been lodged by none other than the prosecutrix herself on 20.07.2023 at Police Station Ashiyana, District Lucknow alleging therein that the prosecutrix came in the contact with the applicant in the month of March, 2022 and thereafter they developed intimacy and were also cohabiting, however, when she refused to cohabit, she was blackmailed by the applicant on the pretext of making her private photographs viral and on 08.10.2022, she was sexually assaulted by the applicant and other co-accused persons named in the F.I.R. and thereafter the applicant had sent obscene photographs of her to different persons named in the F.I.R. The allegations as levelled in the F.I.R. has been corroborated by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. with certain modifications.
6. Highlighting the above facts, it is vehemently submitted on

behalf of the applicant that age of the prosecutrix is admittedly 36 years. She was a married lady and mother of two children and it has been admitted by her that she developed intimacy with the applicant and the applicant had also extended promise of marriage, however, the allegations levelled therein are patently false, absurd and could not be believed on the touchstone of probability.

7. It is vehemently submitted that during the course of investigation, no such photograph has been collected or made part and parcel of the case diary, which may amount to obscene or has been forwarded to the persons named in the F.I.R. It is also submitted that even if the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C. are taken on their face, it will emerge that the prosecutrix was a consenting party and the allegations levelled in the F.I.R. as well as in her statements would itself be falsified by the fact that the dates mentioned therein are patently false in the background of the fact that on some dates, the prosecutrix was talking/chatting with the applicant. In this regard, attention of this Court has been drawn towards certain Whatsapp chats placed as Annexure No.4 to the bail application wherefrom the date of chatting may also be inferred, therefore, the whole allegations, which have been levelled by the prosecutrix, are nothing but the bundle of lies and no promise to marry was ever extended by the applicant. Attention of this Court has also been drawn towards various screen shots of the mobile phone placed at page nos.82, 83 and 84 with regard to certain payments made by the applicant on behalf of the prosecutrix.

8. It is next submitted that applicant is aged about 30 years and he is in jail in this case since 27.08.2023 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.

9. 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.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix has alleged commission of sexual assault by the applicant and certain other persons on the pretext that initially the applicant had extended promise of marriage, but thereafter making sexual relations and

he retracted the same and he is also instrumental in inviting other co-accused persons to cohabit with the prosecutrix. The defence of the applicant appears to be that the prosecutrix is aged about 36 years and mother of two children and she was in a consensual relationship with the applicant, however, their relationship was broken and a false case has been cooked up. Reliance in this regard has been placed on various photographs of Whatsapp and other material in order to show that the allegations levelled in the F.I.R. as well as in the statement of the prosecutrix are patently false. It appears to be an admitted situation that in the case diary, no photograph or video is available, which may be termed as obscene or private. There are many persons, to whom photograph of the prosecutrix is shown to have been forwarded, but the same have not been retrieved. These finer points may be the subject matter of the appreciation of the trial court. The charge-sheet in this case has already been filed. Applicant is in jail in this case since 27.08.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. 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**.

12. Let the accused/applicant- **Vishal Kashyap** 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.

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

14. Identity, status and residence proof of the applicant and

sureties be verified by the Court concerned before the bonds are accepted.

15. 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 :- 7.12.2023

Anupam S/-