

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15035 of 2023

Applicant :- Ajay Soni

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

Counsel for Applicant :- Dinesh Chandra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. It is informed by learned A.G.A. that he 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 Dinesh Chandra, 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- **Ajay Soni** for grant of bail, in Case Crime No. 0326 of 2023, under Section 366 and 376 I.P.C., Police Station Sareni, District Raebareli, 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 the father of the prosecutrix/victim on 08.10.2023 at Police Station Sareni, District Raebareli alleging therein that his daughter, aged about 21 years has left her home on 08.10.2023 at 11:00 am. and when inquired, it was known that she has been enticed away by the applicant. The prosecutrix was recovered on the same day and her statement was recorded under Section 161 Cr.P.C., wherein she stated to have gone to market and when became late, the F.I.R. has been lodged by her father. It is further stated by her that applicant is her friend and she had not gone with her anywhere. The statement of the prosecutrix was also recorded under Section 164 Cr.P.C., wherein she admitted to have accompanied the applicant with her own wish and will but has also stated that since the applicant is not willing to marry her and have also sexually exploited her, she doesn't want to marry him.

5. Highlighting the above facts, it is vehemently submitted that admittedly the date of birth of the prosecutrix is 20.09.2001, by which she was major at the date and time of the alleged

incident. She has also refused to undergo any medical examination and if the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. are read conjointly, it will emerge that she was a 'consenting party' to which, sexual relations established between them earlier.

6. It is further submitted that real state of affairs may also be gathered from the additional statement of the informant and his wife (parents of the victim), a copy of which has been placed at Page No. 34-35 of the paper book, wherein they admitted that the prosecutrix/victim was in love with the applicant and wanted to marry him and in this regard they also approached the parents of the applicant but their proposal of marrying their daughter with the applicant was not accepted by them.

7. Attention of this Court has also been drawn by learned counsel for the applicant on the statement of one Yogesh and Rizay, who are shown to be employed in a hotel where according to the prosecutrix she was taken by the applicant many times for the purpose of establishment of sexual relations, however, these two witnesses who are employed therein have refused to ever seen the prosecutrix with the applicant in the hotel.

8. It is next submitted that applicant is languishing in jail in this case since 26.06.2023 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.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the prosecutrix has been sexually assaulted by the applicant on the false promise of marriage extended by him and, therefore, he is not entitled to be released on bail.

10. Perusal of the record in the background of the submissions made by learned counsel for the parties would reveal that the prosecutrix was major at the date and time of the incident. She is an educated girl as has been admitted by her that she was a student of B.Sc. at the relevant point of time. Various instances have been shown by learned counsel for the applicant occurring in the statements of the prosecutrix as well as the informant and his wife (mother of the prosecutrix) to highlight that prosecutrix was a willing and consenting party so far as the establishment of sexual relations with the applicant is concerned. Applicant is languishing in jail in this case since 26.06.2023 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.

11. 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- **Ajay Soni** 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 on the merits of the case.

Order Date :- 20.12.2023

Praveen