

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15037 of 2023

Applicant :- Shabbir

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

Counsel for Applicant :- Dhananjai Kumar Tripathi

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 AGA informs that he has procured complete instructions in the matter including upto date case diary. Charge sheet in this case has already been submitted.
3. Heard Shri Dhananjai Kumar Tripathi, 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- **Shabbir** for grant of bail, in Case Crime No. 321/2021, under Sections 376, 323, 504, 506 IPC, Police Station Dargah Sharif, District Bahraich, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The FIR of this case has been lodged by the victim herself alleging therein that for the last 2 years she is being subjected to sexual assault by the applicant on the pretext of marrying her and in this period she also became pregnant twice which was also terminated by the applicant and now she is pregnant by six months. However, when she insisted for solemnization of marriage, the applicant and his family members abused her and also intimidated of her life. The statement with regard to the similar allegation has been given by the prosecutrix/ victim under Sections 161 and 164 Cr.P.C.
6. Highlighting the above facts, it is vehemently submitted by learned counsel for the applicant that the age of the prosecutrix is admittedly 35 years and she is already married to a person and having 4 children and the allegations of making sexual relations on the pretext of extending false promise of marriage is patently false, concocted and could not be believed, as a

Muslim wife without being divorced by her husband may not solemnize marriage and therefore there was no occasion or the opportunity for the prosecutrix to have acted upon or believe any proposal of marriage extended by the applicant. In this regard, the reliance has been placed by learned counsel for the applicant on the law laid down by the Hon'ble Supreme Court in ***Shambhu Kharwar vs State of Uttar Pradesh*** reported in ***MANU/SC/1011/2022 : AIR2022SC3901*** and ***Naim Ahamed vs State(NCT of Delhi)*** reported in ***MANU/SC/0080/2023 : 2023CriLJ2785***.

7. It is further submitted that since the prosecutrix is already married to some other person and has not been divorced, her pregnancy may not be attributed to the applicant and if the allegations as levelled by the prosecutrix in the FIR as well as in her statements recorded under Sections 161 and 164 Cr.P.C. are read conjointly, it will emerge that she was a consenting party to such sexual relations and since she was aged about 35 years/ major, no offence in fact has been committed by the applicant.

8. It is further submitted that the applicant is in jail in this case 27.09.2023. Criminal history of 2 cases pertaining to minor offences has adequately been explained in paragraphs no. 4 and 5 of the supplementary affidavit dated 21.12.2023 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.

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. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix is aged about 35 years and she is already married to some other person and is having 4 children from him. Allegations of making sexual intercourse on the pretext of marrying her has been levelled against the applicant. The defence of the applicant appears to be that there was no reason for the prosecutrix to have believed any proposal for marriage as she could not solemnize marriage with the applicant without being divorced by her husband. Thus, it is submitted that the story of making sexual relations on the pretext of marrying is false, concocted and could not be believed. The prosecutrix is also shown pregnant by six months and in this regard, defence of the applicant appears to be that since she is already married, the pregnancy may not be attributed to the applicant alone and also that the sexual realizations, if any, were established with the

consent of the prosecutrix who was major. The applicant is in jail in this case since 27.09.2023 and criminal history of 2 cases pertaining to minor offences has adequately been explained in paragraphs no. 4 and 5 of the supplementary affidavit dated 21.12.2023. His presence 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 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.

12. Let the applicant- **Shabbir** 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.

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 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 :- 22.12.2023

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