

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15229 of 2023

Applicant :- Dinesh Kumar Yadav

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

Counsel for Applicant :- Kaushal Kishore Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1.Learned AGA informs that he has procured complete instructions in the matter including upto date case diary. Charge sheet has already been submitted.

2. Heard Shri Kaushal Kishore Tiwari 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- **Dinesh Kumar Yadav** for grant of bail, in Case Crime No. 0259 of 2023, under Sections 376/323/504/506 IPC, Police Station Bijnour, District Lucknow, during trial.

4. 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 prosecutrix herself on 27.10.2023 alleging therein that in the June, 2021 the applicant has committed sexual assault on her when she was alone in her room and thereafter on the pretext of marrying her he continuously established sexual relationship with her and when she informed his father about their relationship he came to her room and abused and also physically assaulted her. It is also alleged that the applicant is continuously intimidating her. The statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C. wherein she reiterated the same facts as stated in the FIR.

5. Highlighting the above facts, it is vehemently submitted that the age of the prosecutrix was admittedly about 26 years. She was major and was working in a reputed company, thus she was having sufficient intellect to understand her welfare as well as the nature of the act.

6. It is also submitted that the relationship between the applicant and the prosecutrix was a consensual relationship of two adults and the sexual relations between them were also

established with the consent of the prosecutrix the same may not be termed as sexual assault.

7. Highlighting the statement of the prosecutrix recorded under Section 164 Cr.P.C., it is vehemently submitted that it is admitted to the prosecutrix that she was in love with the applicant and they frequently exchanged messages and made sexual relations between them over a period of about two years and in these two years no any complaint has been made by the prosecutrix anywhere and when she unnecessarily started blackmailing the applicant for solemnization of marriage, which was not contemplated, a false case has been lodged against the applicant.

8. It is further submitted that the applicant is in jail in this case since 27.10.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted and the allegations which have been levelled in the FIR as well as in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. are patently false, concocted and could not be believed. 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 of the applicant on the ground that the sexual relations were initially made by the applicant with the prosecutrix by force and thereafter he continuously established sexual relations on the pretext of extending false promise of marriage and thus, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix was about 26 years at the date and time of the alleged incident. She is a working lady. Her medical reports are also clean. Various submissions have been made by learned counsel for the applicant in order to show that the relationship between the applicant and the prosecutrix was a consensual sexual relationship of two adults and the same has lasted over period of two years and in these two years no complaint has been made by the prosecutrix anywhere. It is also the defence of the applicant that after a long standing relationship the prosecutrix started blackmailing the applicant for solemnization of marriage which was never agreed upon and when her demand was not fulfilled the instant FIR has been lodged. The minute contradictory factual aspects of the matter is better required to be dealt with by the trial court at an appropriate stage, in the considered opinion of this Court having regard to the age of the prosecutrix and also keeping in eye on the fact that the first

sexual assault is stated to have been made in the month of June, 2021 and thereafter admittedly the prosecutrix is stated to be in a relationship with the applicant for about two years and having regard to the law laid down by the Hon'ble Supreme Court in the cases ***Shambhu Kharwar vs. State of Uttar Pradesh*** reported in ***MANU/SC/1011/2022: AIR 2022 SC 3901*** and ***Naim Ahmed vs. State (NCT of Delhi)*** reported in ***MANU/SC/0080/2023: 2023 CriLJ 2785***, a case of bail is made out against the applicant. The applicant is in jail in this case since 27.10.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. 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- **Dinesh Kumar Yadav** 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 :- 21.12.2023/Muk