

Court No. - 29

Case :- BAIL No. - 10539 of 2020

Applicant :- Alok Bajpai

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Vikas Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

Perusal of the record would reveal that on 03.02.2021 learned counsel for the complainant Shri Shravan Kumar Verma was present and has requested the Court to grant him sometime for the purpose of filing counter affidavit and while the case was adjourned for the next week, he was directed to file counter affidavit as well as his 'Power' in the Registry. Thereafter the case was fixed on 10.02.2021, on which date the matter was adjourned to be listed in the week commencing 01.03.2021 and, thereafter on 03.03.2021 as the lawyers were abstaining from judicial work, the matter was directed to be listed in the week commencing 05.04.2021. However, neither learned counsel for opposite party no.2 have filed any counter affidavit nor any 'vakalatnama' has been filed, while the notice on opposite party no.2 had already been served in-person vide communication dated 12.01.2021 of Chief Judicial Magistrate, Lucknow.

Heard learned counsel for the applicant through Video Conferencing as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant-**Alok Bajpai** for grant of bail, in Case Crime No. 584 of 2020, under Sections 363, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Madiyon, District Lucknow, during trial.

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.

It is further submitted that the F.I.R. in the instant case was lodged on 11.09.2020 while the occurrence is stated to be on 10.09.2020 and it is stated that the prosecutrix was recovered on the same day at 1:45 in the night and her statement under Section 161 Cr.P.C. was recorded, wherein she had stated that she was studying in D.N.M. Institute of Engineering and was a close friend of the applicant and they were having affair and for about 4-5 times they had indulged in sexual intercourse as they

were in love. However, in the concluding part of the statement of the prosecutrix recorded under Section 161 Cr.P.C. she had stated that the applicant was blackmailing her on the basis of some obscene photographs. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she had stated that on 09.09.2020 applicant had contacted her telephonically and called him at some place from where he had taken her on his motorcycle to a room where he committed rape on her. The statement of the informant was also recorded under Section 161 Cr.P.C. wherein amongst other facts he has stated that his daughter had informed him that the applicant had made sexual relations with his daughter with her will.

Highlighting the above factual matrix, it has been vehemently submitted by learned counsel for the applicant that if the First Information Report, the statement of the prosecutrix recorded under Section 161 Cr.P.C. and 164 Cr.P.C. as well as the statement of the informant recorded under Section 161 Cr.P.C. is read conjointly, the picture will emerge that the prosecutrix was having an affair with the applicant as they were in love and they had indulged in sexual relationship for 4-5 times earlier and as per the statement of the prosecutrix recorded under Section 161 Cr.P.C., no sexual intercourse had taken place on 09.09.2020.

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Learned counsel for the applicant while highlighting the Para No. 13 of the counter affidavit filed by the State further submits that the possession of any obscene photo or video of the prosecutrix by the applicant is also a false narrative, as on the arrest of the applicant his mobile phone was seized by the police, wherein only three pictures of the prosecutrix was recovered which according to the own version of the police were not obscene. While referring to the Para No. 15 of the counter affidavit filed by the State, it has been vehemently submitted by learned counsel for the applicant that it is also an admitted case of the prosecution that on 09.09.2020 no sexual relations were made by the applicant with the prosecutrix.

It is also submitted that the age of the prosecutrix is about 17 years and she is an educated girl as she is studying in D.N.M. Institute of Engineering and the applicant and the prosecutrix were in love and if any sexual relations were made in between them, those relations were consensual and, therefore, could not be termed as rape and the statement of the prosecutrix recorded under Section 164 Cr.P.C. is the result of the tuition of his relatives.

It is next submitted that the applicant is in jail in this matter since 12.09.2020 and he is a young boy of 22 years and is not

having any previous criminal history. Charge-sheet in this case has already been submitted and the applicant is ready to abide by any directions/restrictions which may be imposed by this court as well as by the trial court 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.

Learned A.G.A., however, opposes the prayer for bail of the applicant on the ground that he has committed a heinous offence and having regard to the age of the prosecutrix i.e. 17 years, the applicant is not entitled to be released on bail.

Having heard learned counsel for the parties and having perused the record, it is evident that if the First Information Report, the statement of the prosecutrix recorded under Section 161, 164 Cr.P.C. as well as the statement of the informant recorded under Section 161 Cr.P.C. are read together, it appears that the applicant and prosecutrix were having an affair and the prosecutrix in her statement recorded under Section 161 Cr.P.C. has admitted that the prosecutrix as well as the applicant had indulged in consensual sexual activity for 4-5 times prior to the impugned incident. There are material contradictions in the statement of the prosecutrix recorded under Section 164 Cr.P.C. and Section 161 Cr.P.C. as well as in her statement which has been recorded while she was subjected to medical examination. The age of the prosecutrix is about 17 years and having regard to the fact that she was studying in D.N.M. Institute of Engineering, it could not be ruled out that she was possessing sufficient knowledge and was in a position to fully understand the nature and consequences of sexual activity. Applicant is in jail in this matter since 12.09.2020 without any previous criminal antecedents and charge-sheet in this case has already been submitted.

Having regard to the overall facts and circumstances of the case, I find substance in the submissions made by learned counsel for the applicant for the purpose of releasing the applicant on bail. The bail application is, thus, **allowed**.

Let the applicant- **Alok Bajpai** involved in the aforesaid 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 attempt to make any contact either with the prosecutrix or with the informant.**
- (ii) **The applicant would remain present before the trial court on all dates fixed and if in any eventuality he is not in**

a position to attend the trial court, he will instruct his Counsel to do all needful required for the early disposal of the case and shall file an undertaking before the trial court that he will not seek any adjournment when the prosecution witnesses will be present.

(iii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iv) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(v) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Observations made herein-above are only for the purpose of disposal of this bail application and shall not have any bearing on the fate of the trial of the instant case.

Order Date :- 15.4.2021

Praveen