

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7729 of 2023

Applicant :- Nokhey

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

Counsel for Applicant :- Suyesh Pradhan

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

01. Heard Shri Suyesh Pradhan, learned counsel for applicant and learned A.G.A. for the State.

02. The present bail application has been filed by the applicant seeking bail in case crime no.153 of 2021, under Sections 323, 325, 326, 504 and 506 I.P.C., P.S. Tambour, District Sitapur.

03. As per prosecution case, injured Prema wife of Nokhey was beaten up by her husband with lathi and danda. The incident occurred on 25.05.2021 at 4.00 P.M.. She was medically examined at CHC Tambaur on 25.05.2021 at 8.45 P.M. She complained of intensive pain in her private parts and was referred to District Women Hospital, Sitapur. The Medical Officer found ruptured blister present on labia majora. Her X-ray was done. As per X-ray done at District Hospital Sitapur, besides fracture of 11th rib on left side, a fracture of transverse process of L5 vertebra was also found. After investigation the matter was found coming under Sections 323, 325, 326, 504 and 506 I.P.C.

04. It is contended on behalf of the applicant that the F.I.R. was initially lodged under Sections 323, 504 and 506 I.P.C.. At that time the first informant, who is the injured herself, did not mention causing of any injury to her private parts nor fracture was complained of. The real story is that the injured and the accused got married to each other against wishes of family members of the injured. The in-laws of the accused-applicant were not happy with the marriage. To take revenge they persuaded his wife for filing false F.I.R.. The statements given by her under Section 161 Cr.P.C. give an improved version. She had never said in the F.I.R. that hot iron rod was inserted in her private part. Witnesses are members of her family. The applicant is in custody since 15.06.2021 i.e. last two years five months. He has no criminal antecedents, therefore, he may be released on bail.

5. The application for bail is forcefully opposed by the State highlighting the facts and circumstances as below:-

The injured is the wife of the accused applicant Nokhey. She in her statement under Section 161 Cr.P.C. stated that there has been altercation between her and her husband. She clearly stated that accused tied her hands and legs with her sari and locked the room. He mercilessly assaulted her and inserted hot iron rod inside her private part. He is a drunkard and often physically assaulted her. She has been in extreme pain. She was treated at the hospital. Ruptured blister was found on private part. Dr.Manoj Kumar who examined her stated under Section 161 Cr.P.C. that

she was in extreme pain, therefore, he referred her to District Women Hospital. The victim, members of her family and even independent witnesses supported the prosecution story.

It is further contended that argument of the applicant that no case under Section 326 I.P.C. is made out has no legs to stand. My attention has been drawn to the last clause of Section 320 I.P.C. that defines grievous hurt. It says that any hurt which causes the sufferer in severe bodily pain during the space of twenty days qualified as a grievous injury. It is further contended in the present matter a heated substance was used to cause injury inside the private part, therefore, matter is squarely covered under Section 326 I.P.C.

06. I considered the statement given by the victim, other witnesses, medical evidence produced by the prosecution, nature of the accusation, nature of evidence proposed to be produced and other attending facts and circumstances of the matter. Relationship between husband and wife is one of faith, trust and adjustment. Everyday bickering and altercations are understandable part of a married life. However, resorting to this kind of barbarism is unacceptable and uncondonable. The accused has failed to offer any explanation or any kind of defence to give him benefit of bail. I do not find any good ground to grant bail.

07. The bail application of the applicant is **rejected**.

08. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 20.11.2023

Asha