

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12278 of 2023

Applicant :- Gore Alias Kuleraj

Opposite Party :- Staet Of U.P., Thru. The Prin. Secy., Home Deptt., Civil Sectt., Lko.

Counsel for Applicant :- Wasim Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1.Counter affidavit filed by the State is taken on record.

2. Heard Shri Wasim Ahmad, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Gore @ Kuleraj** for grant of bail, in Case Crime/ FIR No.0311 of 2023, under Sections 376, 452, 352, 506 IPC, Police Station Zaidpur, District Barabanki, during trial.

3. 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 prosecutrix/ victim herself, who is aged about 32 years, while the age of the applicant is 20 years alleging therein that the husband of the prosecutrix is working at Ahmedabad and on 18.07.2023 at 11.00 P.M. the victim was alone in her house with two minor children and as there was no electricity, main door of the house was kept open and finding an opportunity the applicant entered in her house and started committing rape on her and on an alarm raised by the victim her nephew arrived towards them but he was also intimidated by the applicant and when the matter was brought in the knowledge of the family member of the applicant they also intimidated her (prosecutrix) to not file the FIR. Afterwards, when her husband arrived from Ahmedabad then only she had gone to lodge the FIR causing a delay of 5 days.

4. Highlighting the above fact, it is vehemently submitted that the age of the prosecutrix/ victim is 32 years and she was competent enough to lodge the FIR earlier, thus the delay of 5 days stating that her husband was not at home is fatal. It is also

submitted that the informant/ victim's family and the family members of the applicant are having dispute with regard to a drain and it is on this basis, this false case of rape has been lodged.

5. While drawing the attention of this Court towards the medical report of the prosecutrix learned counsel for the applicant submits that no abnormality of any kind has been found therein and the allegation of committing rape only is an untrustworthy statement of the prosecutrix/ victim.

6. It is further submitted that even if the case of the prosecution is taken on its face the only witness, namely, Ajay Kumar has stated to have only seen the applicant quarreling with the prosecutrix and the incident of rape has only been narrated to him (Ajay Kumar) by the prosecutrix. The applicant is in jail in this case since 26.07.2023 and he is not having any criminal antecedent. Charge sheet has already been submitted in this case 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.

7. Learned A.G.A. on the other hand opposes the prayer of bail on the ground that the applicant accused of committing heinous offence therefore he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the applicant as claimed by him is shown as 20 years while the age of the prosecutrix is admittedly 32 years. The FIR has been lodged on 23.7.2023 while the occurrence is of 18.7.2023 and it is stated that the husband of the prosecutrix was not in the city which resulted in the delay in lodging of the FIR. The prosecutrix is the only witness of the crime. The medical examination of the prosecutrix was performed on 24.7.2023 and in that no abnormality or injury of any kind has been found therein. The defence of the applicant appears to be that a dispute with regard to a drain is existing between the parties and it is on this basis, this false case has been lodged.

9. Having regard to all the facts and circumstances of the case and keeping in view the medical examination report of the prosecutrix, in the considered opinion of this Court the facility of bail may be extended to the applicant, moreover he is not having any criminal antecedent. The bail application moved on behalf of the applicant is, thus, **allowed**.

10. Let the applicant- **Gore @ Kuleraj** 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.

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

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

13. 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 :- 2.11.2023

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