

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12431 of 2023

Applicant :- Ram Kishun

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

Counsel for Applicant :- Arvind Kumar, Shivendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. It is also informed by learned A.G.A. that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.
2. Heard 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- **Ram Kishun** for grant of bail, in Case Crime No. 343 of 2023, under Section 376-D and 506 I.P.C., Police Station Ram Nagar, District Barabanki, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the first information report of this case has been lodged as the applicant and informant of the instant case are inimical towards each other on the basis of a dispute pertaining to an immovable property.
5. It is further submitted that in the first information report, which has been lodged by the husband of victim on 21.06.2023 at Police Station Ram Nagar, District Barabanki, the occurrence is shown to be of the intervening night of 07/08.06.2023 alleging that the informant works in a 'pickle factory' at Gonda and at the relevant point of time he was not at his home and his wife (victim) was alone and the accused persons named in the F.I.R. including the applicant entered into his house and committed rape with his wife. The prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. has supported the allegations of the F.I.R. In the medical report of the prosecutrix, no abnormality or injury has been found.
6. Highlighting the above facts, learned counsel for the applicant has drawn the attention of this Court towards the

extract of an F.I.R. lodged by the victim herself on 13.06.2023 at the same police station against co-accused Nootan Tripathi alleging that on 08.06.2023 she was lying at her home when the co-accused Nootan Tripathi entered into her house on the pretext that her husband wants to talk to her and when she refused he started abusing her on which a crowd assembled. It is also stated in the F.I.R. that the co-accused Nootan Tripathi is inimical towards victim. It is vehemently submitted that this F.I.R. (Crime No 323 of 2023) has been lodged with regard to the same incident pertaining to which the instant F.I.R. has been lodged and the applicant has not been named therein. Thus, the incident, which has been shown in the instant F.I.R. is highly suspicious, doubtful and could not be believed.

7. Attention of this Court has also drawn on the statement of the informant, wherein he stated that in the night of 07/08.06.2023 at about 12:20 am. co-accused Nootan Tripathi had called him and informed that victim had come to see a dance event and when he like to talk to her, on which, the informant asked him to hand over the phone to his wife and he asked her as to whether she had come to see the dance event, on which the phone was disconnected and in the next morning his sister-in-law (*sali*) had informed that the victim has been subjected to rape by the applicant and co-accused Nootan Tripathi. In this regard the G.D. entry of the concerned police station pertaining to the lodging of the F.I.R. of the instant case is also highlighted wherein a remark has been added that the incident appears to be doubtful and it is on this score the information of it was not given to high officers of the police.

8. It is vehemently submitted all the circumstances of this case would indicate that the applicant has been falsely implicated, as according to the earlier F.I.R. lodged by the victim herself, he is not shown even present at her house where a quarrel is shown to have taken place between the victim and co-accused Nootan Tripathi. Applicant is languishing in jail in this case since 26.07.2023. The applicant from before lodging of the first information report of the instant case was not having any criminal history and on the basis of this case a case under Gangster Act has been lodged and the bail application in that case could only be moved after obtaining bail in the instant case. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

10. Perusal of the record would reveal that the age of the prosecutrix is admittedly about 35 years. She is married and mother of four children. Pertaining to the incident occurred in the intervening night of 07/08.06.2023 she herself lodged an F.I.R. in the same police station wherein a quarrel is shown to have occurred with co-accused Nootan Tripathi and there was no whisper about the applicant and with regard to the same incident the instant F.I.R. has been lodged. The statement of the husband of the prosecutrix as well as the G.D. entry made by the police with regard to the suspiciousness of the instant F.I.R. has also been highlighted in order to project that the instant case is false, concocted and could not be believed. The medical report of the prosecutrix is clean. The criminal history of one case, which has been lodged subsequent to the lodging of the instant F.I.R. has been adequately explained during the course of deliberations. Applicant is languishing in jail in this case since 26.07.2023. Charge sheet in this case has also been filed and the presence of the applicant 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicant- **Ram Kishun** involved in above-mentioned 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 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 by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 19.10.2023

Praveen