

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11499 of 2023

**Applicant :-** Gufran

**Opposite Party :-** State Of U.P. Thru. Secy. Home, Lucknow

**Counsel for Applicant :-** Prashansa Singh, Suresh Kumar Mishra

**Counsel for Opposite Party :-** G.A., Rajbaksh Singh, Ram Baksh Singh

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Shri Rajbaksh Singh, learned counsel appearing for the complainant/informant submits that this case be taken at 2:15 pm today, by which time he may file counter affidavit.

**Order Date :-** 12.10.2023

Gurpreet Singh

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11499 of 2023

**Applicant :-** Gufran

**Opposite Party :-** State Of U.P. Thru. Secy. Home, Lucknow

**Counsel for Applicant :-** Prashansa Singh, Suresh Kumar Mishra

**Counsel for Opposite Party :-** G.A., Rajbaksh Singh, Ram Baksh Singh

**Hon'ble Mohd. Faiz Alam Khan, J.**

Counter affidavits filed today by State as well as by informant/complainant are taken on record.

Heard learned counsel for the accused-applicant; Shri Rajbaksh Singh, learned counsel appearing for the complainant/informant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant-**Gufran** for grant of bail, in Case Crime No.110/2023, under Sections 376, 506 I.P.C., Police Station- Naka Hindola, District-

Lucknow, during trial.

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 informant/ victim herself on 25.07.2023 alleging that for the last three years, she is in love with the applicant, however, he on the pretext of marrying her established sexual relations and also prepared an obscene video and is blackmailing her and now also refusing to marry and on 23.05.2023, he had taken her to a hotel and established sexual relations and after making the video of the same, intimidating her and also prepared a video on 19.06.2023 and has also sent some photographs to her father. The prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C has narrated the same facts.

Highlighting the above facts, it is vehemently submitted by learned counsel for the applicant that admittedly the prosecutrix has stated to be in a relationship with the applicant since 2019 and in these last more than three years, she has not made any kind of complaint to any public authority and in all probability, she was a consenting party and as admittedly, she was aged about 19 years at the date and time of the alleged incident, no offence has been committed by the applicant. More so, the oral allegations are not being corroborated by any medical evidence as the prosecutrix has refused to undergo any internal medical examination.

It is further submitted that the sexual activity, which is allegedly taken place between the applicant and the prosecutrix may only be termed as a consensual relationship of two adults and the same can never be termed as 'sexual assault' and therefore, the investigating officer has committed material illegality in submitting charge sheet.

It is next submitted that applicant is in jail in this case since 25.07.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

Learned counsel appearing for the informant/ complainant/

victim vehemently opposes the prayer of bail of the applicant on the ground that the applicant by extending false promise of marriage has sexually exploited the prosecutrix and now refusing to marry her.

It is also submitted that some photographs have also been sent by the applicant and have been given to the investigating officer, on the basis of which the prosecutrix was being blackmailed. Thus, having regard to the material which has been collected by the investigating officer, the applicant is not entitled to be released on bail.

Perusal of the record would reveal that the prosecutrix is aged about 20 years as has been mentioned by her in her first information report. Allegations of sexually assaulting her on the pretext of marrying and also of filming obscene video of sexual activity and blackmailing her on the pretext of making them viral, has also been alleged. The defence of the applicant appears to be that prosecutrix was a major and the decision of indulging in any sexual activity was her conscious decision and therefore, the same may not be termed as sexual assault or rape, more so, when no complaint of any kind has been made to any public authority in the last more than three years wherein the prosecutrix was in relation with the applicant. Reliance in this regard has been placed on the law laid down by Hon'ble Supreme Court in *Shambhu Kharwar Vs. State of Uttar Pradesh*; 2022 SCC OnLine 1032 and *Naim Ahamed Vs. State (NCT of Delhi)*; 2023 SCC OnLine SC 89 in order to show that a consensual activity between two adults may always not be given the colour of sexual assault committed on mistake of fact (by giving false promise of marriage). Charge-sheet in this case has already been filed. Applicant is in jail in this case since 25.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

Having regard to the overall facts and circumstances of the case and 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**.

Let the accused/applicant- **Gufraan** 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 attempt to contact the prosecutrix or any of the family members of her and any prosecution witness directly, indirectly or through any social platform e.g. whatsapp, facebook etc. and in this regard, he shall file an undertaking before the trial Court.

(ii) The applicant shall not display any picture of prosecutrix as his DP of whatsapp or facebook and violation of this condition alone would be sufficient to cancel the facility of bail granted to the applicant.

(iii) 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.

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 by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

**Order Date :- 12.10.2023**

Gurpreet Singh