

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42732 of 2023

Applicant :- Shivam Chaudhary

Opposite Party :- State of U.P.

Counsel for Applicant :- Praveen Kumar Singh, Anurag Vajpeyi

Counsel for Opposite Party :- G.A., Shad Khan

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Anurag Vajpeyi, learned counsel for the applicant, Sri Shad Khan, learned panel lawyer of the High Court Legal Service Committee representing the victim, Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Shivam Chaudhary, seeking enlargement on bail during trial in connection with Case Crime No.548 of 2023, under Sections 376, 506 I.P.C., registered at Police Station Bisrakh, District Gautam Budh Nagar.

4. The FIR of the matter was lodged on 15.7.2023 by the victim herself against the applicant alleging therein that on 14.7.2023 at about 11 a.m., the applicant messaged her to send Rs.1,000/- on Paytm. Even earlier he has forcibly asked money from her on which she had refused and then he had threatened her to make her video viral and as such looking to it and on the fear of society, she agreed to his demand. Yesterday he met her in a park and told her that everyone are seeing them and as such she may come to a hotel as he wants to talk to her. He then took her to Shiva hotel on the main G.T. Road. He then established physical relationship with her and threatened her that if she discloses it to anyone, he would make her video viral. He is blackmailing her from different mobile numbers. Her age is 24 years.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim in her statement under Section 161 Cr.P.C. states of her age to be 24 years and further states that she used to talk to the applicant since the last two years. On 14.7.2023, she went to her college for taking mark-sheet from where she went to the house of her friend where she received a message from the applicant to send

Rs.1,000/- and on refusal he threatened to her of making her video viral. She was then called to a park from where he took her in a hotel where he established physical relationship with her 3-4 times and threatened her of not telling this to any one and not to make complaint otherwise he would make video viral. It is argued that in the statement under Section 164 Cr.P.C. the victim states that she knows the applicant since last two years when she was living in front of house of applicant on rent where they used to talk with each other and they used to establish physical relationship between them. The engagement ceremony between them was performed. It is argued that the he had made a video of her to which she did not refuse. The family members of the applicant broke the marriage by stating that the girl is not good. On 14.7.2023 she went to take her mark-sheet where the applicant met her and took her to a hotel where he got sex 3-4 times. He threatened her of making the video viral if she tells it to anyone. It is argued that the reading of the statement of the victim would go to show that she was a consenting party to the said relationship. It is argued that there was some discussion and settlement of marriage between the applicant and the victim but the same could not continue and broke which was the reason for lodging of the FIR. It is argued that the victim is a consenting party. It is further argued while placing para no.17 of the affidavit that the applicant did not circulate any photograph or video of the victim on any social media. It is further argued while placing para no.27 of the affidavit that the victim demanded money from the applicant and his family members which was refused after which the present FIR has been lodged. It is argued that the reading of the statements of the victim goes to show that she was a consenting party and there is no force exerted on her. No video or photo whatsoever has been recovered by the police during investigation as there is no prosecution of the applicant under any provisions of the Information Technology Act. It has also been pointed out that the applicant is not having any criminal history as stated in para 31 of the affidavit. The applicant is in jail since 15.7.2023.

6. Per contra learned panel lawyer of the High Court Legal Service Committee representing the victim vehemently argued that on a false promise to marry, the applicant has completely jeopardized the entire career and life of the victim. The incident of the hotel is admitted and further the engagement between the applicant and the victim is also admitted by the applicant. From the hotel, the police has recovered some broken bangles and some other articles which would go to show that there had been sexual activity in the room. It is argued that in so far as the version regarding video is

concerned, the same is consistent throughout as being in the FIR and the statements of the victim recorded under Section 161 Cr.P.C and 164 Cr.P.C. It is further argued that the victim has moved an application for further investigation before the court concerned in the present matter which is pending disposal.

7. Learned counsel for the State also opposed the prayer for bail and argued that charge sheet in the matter has been submitted on 25.7.2023 against the applicant. It is argued that the statement of the victim under Section 164 Cr.P.C. clearly states of physical relationship between her and the applicant on false promise to marry, as such the applicant is involved in the matter. Learned counsel for the State in all fairness states that there is no video or photograph recovered during the investigation which could be incriminating and also that there is no prosecution under the Information Technology Act. Both the learned counsels argued that prayer for bail be rejected as such.

8. After hearing the counsel for the parties and perusing the record, it is evident that the victim on her own showing is a major girl. The relationship between the applicant and the victim was on some understanding and fixation of marriage between them. Even the engagement ceremony was performed between them. The marriage subsequently broke then FIR was lodged. The victim even went to a hotel with the applicant without any complaint or hesitation. No such objectionable video or photograph have been recovered during the investigation which is an admitted case of the prosecution.

9. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant-**Shivam Chaudhary**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any

manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

12. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 28.10.2023
Gaurav Kuls