

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11724 of 2023

Applicant :- Badri Vishal Awasthi

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

Counsel for Applicant :- Arun Sinha, Mohammad Zeeshan Lari, Prakhar Kankan, Siddhartha Sinha

Counsel for Opposite Party :- G.A., Ashish Mishra

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the complainant and rejoinder affidavit filed on behalf of the applicant are taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
3. Heard Shri Arun Sinha, learned counsel assisted by Shri Siddhartha Sinha, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Ashish Mishra as well as Shri Sanjeev Trivedi, learned counsels appearing for the informant/complainant and perused the record.
4. At the outset, it is brought in the knowledge of this Court that when the F.I.R. of the instant case was lodged at Police Station Bangarmau, District Unnao, Case Crime No.254 of 2023, Police Station Bangarmau, District Unnao was given, however, the investigation of this case was transferred to Police Station P.G.I., District Lucknow and new Case Crime No.475 of 2023 was allotted and when this case was again transferred for investigation to Unnao, new Case Crime No.342 of 2023, Police Station Bangarmau, District Unnao was given to the instant case. Thus now the applicant is being remanded in judicial custody in Case Crime No.342 of 2023, Police Station Bangarmau, District Unnao.
5. This bail application has been moved by the accused/applicant- **Badri Vishal Awasthi** for grant of bail, in Case Crime No.475 of 2023, under Sections 376-D, 506 I.P.C., Police Station P.G.I., District Lucknow (now Case Crime No.342 of 2023, under Sections 376-D, 506 I.P.C., Police Station Bangarmau, District Unnao), during trial.

6. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

7. It is further submitted that informant of this case is the wife of the applicant and the discorded matrimonial relations between them have been stretched so far, so as to give the colour of sexual offences and allegations of making porn films involving the informant and son of the applicant have also been alleged apparently without there being any material or evidence in support of the same. Elaborating further, it is submitted that aggrieved by the lodging of the F.I.R., the applicant and other co-accused persons namely Akash Awasthi and Virendra Shukla had approached this Court by filing Criminal Misc. Writ Petition No.5291 of 2023, however, unfortunately the same was dismissed by a Division Bench of this Court vide order dated 12.07.2023 and the applicant was arrested on 10.08.2023 and the remaining two petitioners namely Akash Awasthi and Virendra Shukla approached Hon'ble Supreme Court by filing Petition for Special Leave to Appeal (CRL.) No.11126 of 2023 and vide order dated 12.09.2023 passed therein, Hon'ble Supreme Court though permitted the investigation to go on but with a rider that Final Report under Section 173(2) Cr.P.C. shall not be filed till further orders and also stayed the arrest of the petitioners before the Supreme Court.

8. While relying on the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., wherein allegations have been levelled with regard to pressurizing her to make porn movie, in the month of September, 2022 as well as of sending a porn photograph to her on 25.05.2023, it is vehemently submitted that though one out of the many F.I.R.s lodged by the informant was lodged on 10.06.2023 bearing Case Crime No.236 of 2023 at Police Station Bangarmau, District Unnao under Sections 498-A, 323, 377 I.P.C. and 5/6 of the P.O.C.S.O. Act, but the incident allegedly occurred in September, 2022 was not mentioned therein and on a specific query made by the investigating officer with regard to the fact that the obscene photo allegedly provided by the victim to the investigating officer is not showing her face, she asked him (investigating officer) to collect the other photographs from the applicant. It is vehemently submitted that there is no photograph or any obscene video collected by the investigating officer, which may even prima facie connect the applicant with any act of making porn photographs or videos and the same has been alleged only to harass the applicant.

9. It is further submitted that the matrimonial enmity has gone

to such an extent that the son of the applicant has also been dragged into this case and the allegations have been levelled that he was sexually assaulted by the real brother of the applicant namely Akash Awasthi in order to prepare a porn movie, however, the applicant is not aware of the fate of the investigation pertaining to that case but the applicant and co-accused Akash had approached this Court with regard to that case by filing Criminal Misc. Writ Petition Nos.4843 of 2023 and 4844 of 2023 and the Division Bench of this Court was pleased to stay the arrest of the applicant as well as as of co-accused persons vide orders dated 26.06.2023 till submission of police report under Section 173(2) Cr.P.C.

10. It is also submitted that in support of the allegations as levelled by the informant/victim, there is only oral allegations and there is no medical evidence in support of the same as the informant refused to undergo internal medical examination and no injury etc. has been found on her external examination and till now no video, picture or any evidence has been collected by the investigating officer, which may even remotely connect the applicant with preparation or making of porn videos or films, while the investigation has almost concluded and report under Section 173(2) Cr.P.C. could not be filed as stayed by Hon'ble Supreme Court.

11. It is also submitted that the prosecutrix/informant is in a habit of filing false criminal cases against the applicant on account of matrimonial discorded relations and except the instant case three other F.I.R.s have been lodged by her making frivolous allegations and the criminal history of these three cases, which are apparently having colour of matrimonial dispute, are described in para nos.37 to 52 of the bail application. It is vehemently submitted that the investigation of the instant case has almost concluded but having regard to the order passed by Hon'ble Supreme Court, final report under Section 173(2) Cr.P.C. could not be filed and there is no iota of evidence with regard to the allegations levelled by the informant against the applicant. Co-accused persons namely Akash Awasthi and Virendra Shukla to whom similar or aggravated allegations have been levelled, have been granted protection from arrest by Hon'ble Supreme Court.

12. It is next submitted that applicant is in jail in this case since 10.08.2023 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 or he in any way influence the witnesses.

13. Learned A.G.A., however, opposes the prayer of bail of the

applicant on the ground that the applicant has committed an heinous offence, however, it is informed that investigation in this case is almost completed but having regard to the order passed by Hon'ble Supreme Court, Final Report (under Section 173(2) Cr.P.C.) could not be filed.

14. Shri Ashish Mishra as well as Shri Sanjeev Trivedi, learned counsels appearing for the informant/complainant vehemently opposes the prayer of bail of the applicant on ground that the applicant has not only ousted the informant/victim from her matrimonial home but has also pressurized her to involve in the business of making porn films.

15. It is also submitted that the police is in connivance with the applicant, which is evident from the fact that the pairkar of the applicant may easily get the extract of the case diary on the basis of which the instant bail application has been drafted and moved before this Court and in this regard reliance has been placed on ***Eega Soumya Vs. M. Mahender Reddy and others; Contempt Petition (C) No.555 of 2022*** and ***Miss 'A' Vs. State of Uttar Pradesh and another; Criminal Appeal No.659 of 2020***.

16. It is further submitted that the connivance of the police with the applicant is to such an extent that despite providing links as well as videos pertaining to porn films uploaded by the applicant, which were 150 in numbers, the police has not done anything and many of such videos have now been deleted from the porn sites. It is also submitted that sexual assault was also committed with the son of the victim in the month of January, 2022 by the co-accused Akash Awasthi with the consent of the applicant and in the month of September, 2022 by co-accused Akash Awasthi and Virendra Shukla on informant/victim, however, since then the prosecutrix is living separately.

17. Learned counsel for the informant/complainant has raised various submissions in order to show the brutality committed by the applicant with her and submitted that applicant also used to assault the victim. It is also submitted that though Section 376 I.P.C. simplicitor may not attract against the applicant as he is the husband of the victim but so far as the Section 376-D I.P.C. is concerned, the applicant may be charged therein and having regard to the material/evidence available against the applicant, the applicant is not entitled to be released on bail.

18. Having heard learned counsel for the parties and having perused the record, it is evident that this Court vide order dated 04.10.2023 found that the instant bail application is maintainable before this Court though investigation of the case

appears to have been transferred from Lucknow to Unnao, on two scores, at first the prayer of bail of the applicant had been rejected by the Sessions Judge, Lucknow and secondly Lucknow as well as Unnao falls within the territorial jurisdiction of this Bench (Lucknow Bench of Allahabad High Court) and also on the ground that no fruitful result would be served by relegating the applicant, who is confined in jail, to again approach the court of Sessions for adjudicating his bail application while his bail application in this case has already been rejected by Sessions Judge (Sessions Judge, Lucknow).

19. Coming to the merits of the instant case, F.I.R. of the instant case has been lodged by the victim alleging many allegations including pressurizing the prosecutrix to indulge in porn video making and also of commission of sexual assault on victim by the co-accused Virendra Shukla and Akash Awasthi with the consent of the applicant and also with the son of the applicant by his brother Akash Awasthi and also of making obscene videos with further allegations of assaulting the prosecutrix. Specific month with regard to the incident occurred with the prosecutrix and her son has been shown as September, 2022 though learned counsels appearing for the informant/complainant has submitted that the son of the informant was sexually assaulted in the month of January, 2022. Victim is the wife of the applicant and evidently they are not having good matrimonial relations. The allegations, which have been levelled against the co-accused persons namely Akash Awasthi and Virendra Shukla, appear to be similar as have been levelled against the instant applicant and Hon'ble Supreme Court in its order dated 12.09.2023 passed in Petition for Special Leave to Appeal (CRL.) No.11126 of 2023 has granted stay from arrest to co-accused persons with a further rider that report under Section 173(2) Cr.P.C. in this case shall not be filed till further order. It also appears to be an admitted fact that the aforesaid S.L.P. is still pending before Hon'ble Supreme Court and the same has not been disposed of yet. In support of the allegations, there are only oral statement of the prosecutrix/informant alone as in the whole case diary, no obscene video, photograph etc. appears to have been collected by the investigating officer, other than those provided by informant/victim in a pen drive, which according to learned counsel for applicant will not even prima facie connect the applicant with the crime and these photographs/videos are stated to have been provided by the informant from her laptop in the pen drive to the investigating officer. Learned counsel for the applicant has admitted that those videos were uploaded by the applicant. It is not the case of the informant that these videos were pertaining to the informant. It also appears to be an

admitted case that the investigation in this case has almost concluded and the last remand of the applicant has been taken under Sections 376-D, 506 I.P.C. so the applicant is not being remanded in any of the Section of the Information Technology Act, 2000. Criminal history of three cases, in the considered opinion of this Court, has been adequately explained and apart from these cases lodged by victim, the applicant is not involved in any other criminal case. Admittedly the prosecutrix and applicant are having strained matrimonial relations and many F.I.R.s alleging offences under Section 498-A I.P.C. apart from other penal sections have been filed by the informant against the applicant and other accused persons.

20. So far as the contention of the learned counsel appearing for the informant/complainant with regard to using of extract of the case diary by the accused applicant contrary to the directions issued by this Court as well as by Hon'ble Supreme Court, the same appears not to be the subject matter of this application moved under Section 439 Cr.P.C. and the same may be taken care of at any other time under some other jurisdiction. Applicant is in jail in this case since 10.08.2023. The presence of the applicant could be secured before the trial court by placing adequate conditions.

21. 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**.

22. Let the accused/applicant- **Badri Vishal Awasthi** 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.

23. In case of breach of any of the above conditions, it shall be

a ground for cancellation of bail.

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

25. 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 :- 10.10.2023

Anupam S/-