

Court No. - 76

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Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44277 of 2021

Applicant :- Balram Jaiswal

Opposite Party :- State of U.P.

Counsel for Applicant :- Shri Prakash Dwivedi, Parmeshwar Kr. Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

[1] Heard learned counsel for the applicant as well as learned A.G.A. and perused the records of the bail application.

[2] The applicant named above, is behind the bars since 09.08.2021 in connection with case crime no.316 of 2021 under section 376, 504, 506, 507, 354, 354(Kha) of IPC and Section 67 of I.T. Act, Police Station-Lanka, District-Varanasi.

[3] On 06.12.2021, bench of this Court has directed learned A.G.A. to file counter affidavit within a week and pursuant to the direction, counter affidavit dated 05.01.2022 is on the records. Its rejoinder affidavit too is filed and thus, the bail application is ripe for final submission by the rival parties.

[4] While attracting the attention of the Court to the FIR, lodged by the prosecutrix herself on 25.03.2021 against sole named accused Balram Jaiswal under the aforesaid sections of IPC and I.T. Act for the incident said to have taken at unknown time and date.

[5] Long and short of the accusation made in the FIR by the victim herself is that both victim and applicant are young lads of now-a-days who came into contact with each other through FACEBOOK platform. The victim is pursuing her law course from Banaras Law College. The applicant is the resident of Police Station-Chunar, district-Mirzapur.

[6] Since both were FACEBOOK acquaintances and on this score, the applicant extended all help and assistance to her, in settling her down at Varanasi. When this relationship got deepen, both of them visited number of places and eventually culminated to a present mishap. It is alleged that after crossing all the limits of decency and chivalry, the applicant has outraged her modesty. Thereafter allegedly has taken certain intimate "videos and pictures" in intimate condition and thereafter, started exploiting her. He kept on transgressing his limits quite often and then started sending lascivious and objectionable whatsapp chats with her, just to threaten and to feel her embarrassed and uneasy.

[7] On 22.02.2021, when she was going to her room, enroute she was intercepted by the applicant, thereafter, he misbehaved with her and extended all sorts of threats and hurled filthy abuses to her. On these lines, the prosecution story was narrated by the sufferer.

[8] Sri S.P. Dwivedi, learned counsel for the applicant has tried to impress upon the Court in support of bail application, by advancing a long submissions. To summarise his arguments, he submits :-

(i) The victim is a major girl of now-a-days, belongs to Muslim community and student of law, thus, she very well understands the far reaching repercussions of pre-marital sex. What ever is done, between them is sheer love and affection in which she was having her own share of consent in it. Being major girl, the action would not fall within four corners of Section 375 IPC.

(ii) In her 161 and 164 Cr.P.C. statements, she has broadly reiterated the version of the FIR and she admitted her relationship with the applicant and also acknowledged the help and cooperation extended by the applicant to her in settling her at Varanasi but she states that winning her confidence, she crossed the limits, establishing physical relationship with her. Thereafter, having videos/pictures in that condition plus certain intimate photos of the duo. It is alleged in her 164 Cr.P.C. statement that the applicant started blackmailing her and threatened her to send those videos and photos to her family members and would make it viral. Horrified by this, she started dancing on his tune. There are certain filthy whatsapp conversation between them and the applicant, eventually, sent all those photos to her family members and also threatened to make those pics viral in public. The victim was virtually bagging from him to return back her videos and photos to her but the appellant has got different mindset and plans to exploit her to the core.

[9] It is further stated that pursuant to the FIR, she was referred for medical examination. Perusal of the medical report indicates that there is no sign of recent forcible sexual relationship. Naturally so, there was no allegation of recent sexual assault by the applicant upon her and as such, there could not be any mark of injury over her private organs.

Much emphasis has been laid upon Para 11 and the Annexure 6 of the affidavit. In order to establish consensual relationship, the applicant has affixed, certain intimate pics of applicant with the victim, without hiding her identity or face. This is turning point of this case. The bail application and its annexures are now public documents. A lady(victim) whose identity was not public, after annexing these photos and whatsapp chatting as annexures are now known to all. This would now be detrimental to her future prospects. She is now become a public shame. Now, her identity is fixed by none other than the applicant himself.

Besides this, the inter se Whatsapp chats, one can easily gather and gauge the depth of their relationship and thereafter venom vomiting are the stage of their breakup. The Court has perused these chatting in which the applicant has clearly extended threats to her to forward those pictures to her family members and eventually did it and the applicant has crossed all the limits of decency.

[10] All these materials clearly indicates the selfish and short-sighted approach of applicant, who in order to establish the consensual relationship, would mercilessly sacrifice other's dignity, honour on road who was his own girlfriend

at one point of time. She has permitted to have those photographs under certain confidence and understanding with the applicant but the applicant now backstabbed her and betrayed her to its core, just to establish his point. Naturally, the victim has to pay its heavy price in future. Under these circumstances, the applicant cannot be permitted to roam around freely, without paying the price of this sin. In the nutshell, this is exclusive case of betrayal of the faith of the victim by the applicant. In her 164 Cr.P.C. statement, she clearly states that applicant has forwarded those intimate photographs to her family members and the author of those pics are none other than the applicant alone.

[11] After assessing the material on record, the applicant do not deserve any sympathy. Keeping in view that it is the applicant who exploited his relationship for his joy, thereafter, winning victim's confidence, succeeded in getting those intimate photographs and lastly started blackmailing her. He is most gender insensitive and crooked person.

[12] Hence, the present bail application stands **REJECTED**.

Order Date :- 7.2.2022

Sumit S