

**Court No. - 67**

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**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 57058 of 2019

**Applicant :-** Shivsagar Yadav

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Swati Agrawal  
Srivastava, Kamal Krishna (Senior Advocate), Vinay  
Kumar Singh Chandel

**Counsel for Opposite Party :-** G.A., Raj Kumar  
Yadav, Sunil Kumar

**Hon'ble Rahul Chaturvedi, J.**

Heard Sri V.P.Srivastav, learned Senior Counsel, assisted by Sri Vinay Kumar Chandel, learned counsel for the applicant, Sri Raj Kumar Yadav, learned counsel for the complainant and Sri Nishant Singh, learned Brief Holder for the State at length and perused the material brought on records.

Submissions made by the learned counsel for the applicant that the applicant is facing prosecution in case crime no. 220 of 2019, under Sections 392, 411, 376D, 328, 506, 386 IPC, P.S.Jhansi, District Allahabad and is in jail since 25.02.2019.

Pleadings between the parties have been exchanged and the matter is ripe-up for final disposal of instant bail application on merit.

From the text of the FIR, lodged by complainant-Jai Kumar, father of the victim on 24.02.2019 for the incident said to have been taken place on 23.02.2019 against the present applicant, Amit Pasi, Vineet pasi and 6-7 unknown persons with the allegation that on 23.02.2019, the victim Ms. 'X' left her residence for Varanasi at 9.00 a.m. to catch a bus from Andawan Bus Stop. Around 11.00 a.m. when she was going by bus, the applicant with two named accused persons and 6-7 unknown persons have intercepted the bus and forcibly de-boarded the girl from the bus thereafter taken her to some unknown destination and have committed sexual assault upon her. It is alleged that enroute they have looted her golden

ornaments, cash amount and mobile and thereafter in the stage of intoxication ravished her one by one and lastly, extended threats not to share the incident with anyone else they would kill her.

On this prosecution story, the police started investigation into the matter and recorded the 161 Cr.P.C. Statement of Ms.'X' in which she has given graphic description and every minutest detail of the atrocities faced by her by the applicant and his accomplices.

In the 161 Cr.P.C. Statement, she mentioned that all the accused persons besides committing rape with her repeatedly, also physically assaulted her and has given burn injuries by cigarette. From the 161 Cr.P.C. Statement of the victim, it is clear that it is the applicant, who has mercilessly and against her wish and desire, per-force, repeatedly sexually assaulted her.

Thereafter, her 164 Cr.P.C. Statement was recorded on 11.03.2019 in which she states that both of them are in acquaintance with each other since 2018. On the earlier occasions too, the applicant had assaulted her sexually and have taken her certain obscene videos.

After showing those videos, she was subject matter of blackmail and repeatedly sexual relationship were established by the applicant. Since those obscene videos with the applicant and thus she was dancing on the tune of applicant. In her 164 Cr.P.C. Statement she has almost reiterated the version of 161 Cr.P.C. Statement with the further improvement that after sneaking from the clutches of applicants, informed the police who conducted a raid over the premises and found the applicant in the stage of intoxication, in a naked condition.

The Court has also perused the medical of the victim and the F.S.L. Report annexed in counter affidavit as Annexure No. CA-2, from Ram Nagar, Varanasi dated 10.04.2019. From the medical, it is clear that the age of the victim is 19 years, as per radiological report. She was put for medical

examination on 24.02.2019 at 1.20 p.m., she has given statement before the doctor endorsing her previous statements. There were sign of physical violence over her hand, belt, elbow, nose and cheeks. In addition to it, there was a burn injury by the cigarette. The doctor has observed that there were many injuries over her person and vaginal bleeding was present. In additional to this, she was complaining painful unination, swelling injuries over the face, over both the lips and multiple contusion over the back and over left scapular region. While examining her internal private organs, there was redness present over her vaginal region.

The FSL examination report of the victim indicates that in vaginal and cervical swab taken, blood stains were found and blood spots were visible over her laggings and undergarments establishing the fact that she was subject of brutal and merciless sexual assault.

Learned counsel for the applicant has submitted that co-accused persons, namely, Amit Pasi and Vineet Pasi have already been enlarged on bail by the coordinate Bench of this Court. The counsel for the applicant submits that the case of present applicant stands on similar footing and as such applying the principle of parity, the applicant too deserves to be bailed out.

The Court is afraid to accept this submission advance by learned Senior Counsel Sri V.P.Srivastava. In the case of gang-rape and sexual offences, principle of parity would not apply. At best, the victim would be in consensual relationship with one person and not with all the named accused person, who have allegedly participated in the offence. However, in her 161 Cr.P.C. Statement she has made the applicant as main accused. Moreover when on the keen analysis of statements of victim under Section 161 and 164 Cr.P.C., it is clearly borne out that the applicant is the person who has made this misadventure with the victim on the earlier occasion too and ravished her time and again after blackmailing her. This time, the applicant crossed all the limits of brutality and after de-boarding the

victim from running bus and mercilessly assaulted her body and soul, against her wish and desire. This is most inhuman and abhorring offence where the entire personality of victim is being crushed none other than the present applicant.

A conjoint reading of statements under Section 161 and 164 Cr.P.C., her medical report as well as F.S.L. report of the victim clearly indicates that there is active involvement of present applicant in commission of offence against the victim.

From the aforesaid materials on record, there is no iota of evidence that she was consensual relationship with the applicant. She was taken out from running bus, thereafter, forcibly intoxicated and then time and again she was sexually assaulted by the applicant in the stage of helplessness. The applicant after taking the ill-advantage of his masculinity, overpowered the poor victim and has butchered her physical body. From the records, it is absolutely clear that this is not the case of mistaken identity or case of false implication of the applicant by the victim.

Taking into the account of panoramic view of all the facts and circumstances, respective statements of victim, her medical report as well as F.S.L. report, involvement of the applicant is considerably fixed and thus deserves no sympathy. The bail application of the applicant is hereby **REJECTED**.

However, in case the applicant cooperates with the trial, it is expected from the trial court that without being affected by any of the observation made above, it would apply its own independent judicial mind and decide the Sessions Trial within the four corners of law as expeditiously as possible, preferably within a period of 1-1/2 years from the date of production of certified copy of this order before him.

**Order Date :- 8.7.2021**  
Abhishek Sri.