

**Court No. - 11**

**Case :-** BAIL No. - 9009 of 2021

**Applicant :-** State Of U.P. (Minor B.C.)

**Opposite Party :-** Gayatri Prasad Prajapati

**Counsel for Applicant :-** G.A.

**Hon'ble Rajeev Singh,J.**

Heard Shri V.K. Shahi, Additional Advocate General assisted by Shri Anurag Verma, learned counsel for the applicant.

The present bail cancellation application has been filed with a prayer to cancel the bail granted to opposite party (Gayatri Prasad Prajapati) by Special Judge, M.P. M.L.A./Additional Sessions Judge, Court No.19, Lucknow, vide order dated 30.07.2021 in Case Crime No.163 of 2020, under Sections 506, 386, 388, 419, 420, 467, 468, 471, 120-B I.P.C., Police Station-Gomti Nagar Vistar, District Lucknow.

Learned counsel for the applicant has submitted that a lady had been administered some intoxicating substance and subsequently, had been raped by the opposite party as well as other accused persons and obscene photo of the aforesaid victim had been clicked. On the basis of same, she was being blackmailed and forced to have sexual intercourse with the accused persons. The victim/prosecutrix filed a petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court, seeking registration of a First Information Report against the opposite party as his FIR was not being lodged because he was the Minister in the Ruling Government. Hon'ble Supreme Court, passed an order dated 17.02.2017 in the aforesaid writ petition in Criminal No.160 of 2016 (Savita Pathak VS. State of Uttar Pradesh and Ors.) directed the concerned Police Station to register the FIR on the basis of complaint and further directed the Police to investigate into the

matter and submit its report in a sealed cover within seven weeks from the date of order. Thereafter, Case Crime No.29 of 2017, under Sections 376D, 376, 511, 504, 506 I.P.C. and Sections 3/4 POCSO Act, Police Station Gautampalli, District Lucknow was lodged on 18.02.2017 against seven persons, namely, Gayatri Prasad Prajapati, Ashok Tiwari, Pintu Singh, Vikash Verma, Chandra Pal, Rupesh and Ashish Shukla.

Learned counsel for the applicant has submitted that bail was granted to opposite party by the court below on 25.04.2017 in the aforesaid case and State of U.P. preferred an application for cancellation of Bail Application No.3584 of 2017, which was allowed on 26.05.2017 and Bail Application No.10101 of 2017 (Gayatri Prasad Prajapati Vs. State of U.P.) in Case Crime No.29 of 2017 (supra) was rejected by this Court, vide order dated 14.12.2017, and thereafter, second Bail Application No.5743 of 2019 was also moved before this Court, which is pending. In the aforesaid bail application, on the medical ground, aforesaid bail application was allowed on 03.09.2020, which was assailed before the Hon'ble Supreme Court by way of a Criminal Appeal No.686 of 2020 and bail order dated 03.09.2020 was set aside.

Learned counsel for the applicant has submitted that FIR No.163 of 2020, under Sections 506, 386, 388, 419, 420, 467, 468, 471, 120-B I.P.C., Police Station-Gomti Nagar Vistar, District Lucknow was lodged by one Brij Bhawan Chaubey, who was one of the Directors of the company of opposite party (Ex-Minister) on 17.09.2020 with the allegation of several transactions of huge money and also execution of sale deed as benaami transaction. During the course of investigation, statements of witnesses, namely, Prashant Singh Sengar, Angerj Singh, Atul Kumar Singh, Smt. Sarita Dwivedi, (Deputy Manager, ICICI Bank, Gomti Nagar, Lucknow) and Kanhaiya Ji

Ojha were recorded and charge-sheet was filed by the Investigating Officer, but the court below, at the time of passing the impugned order, failed to consider the statement of the witnesses recorded, under Section 161 Cr.P.C. He further submitted that court below also observed that the prosecution has not placed any criminal history of the opposite party. He further submitted that opposite party was having criminal history of seven cases, which is reads as under:-

(i) Case Crime No.537 of 2020, under Sections 386, 419, 420, 467, 468, 471 and 506 I.P.C., Police Station Gazipur, District Lucknow.

(ii) Case Crime No.29 of 2017, under Sections 504, 506, 376, 511, 376 D I.P.C., Police Station Gautampalli, District Lucknow.

(iii) Case Crime No.336 of 2017, under Sections 323, 406, 504, 506, 420 I.P.C., Police Station Gautampalli, District Lucknow.

(iv) Case Crime No.1330 of 2016, under Sections 504, 506, 354A, 364, 511, 120-B I.P.C., Police Station Gomti Nagar, District Lucknow.

(v) Case Crime No.417 of 2015, under Sections 467, 468, 471, 420, 203, 120-B I.P.C., Police Station Gomti Nagar, District Lucknow.

(vi) Case Crime No.147 of 2017, under Sections 188 I.P.C. and Section 171 Representation of the People Act, Police Station Gauriganj, District Amethi.

(vii) Case Crime No.93 of 2017, under Section 188 I.P.C., Police Station Gauriganj, District Amethi.

The court below observed that the opposite party was in confinement since last ten months and prosecution could not explain that how he was involved in crime and without giving

any reasons i.e. (i) merely on the point that the prosecution has not placed any criminal history to the opposite party, (ii) he was in jail since 15.03.2017 and in the present case, he is in jail since last ten months, (iii) charge-sheet has already been filed and considering the confinement period.

It is evident that, in case applicant was in jail since 15.03.2017 and FIR of the present case was lodged on 17.09.2020, meaning thereby, he was having criminal history, but this fact was not considered by the court below.

Matter requires consideration.

Issue notice to opposite party No.2.

Steps be taken within a week.

List this case on 16.11.2021.

Till the next date of listing, operation and implementation of the order dated 30.07.2021 passed by Special Judge, M.P. M.L.A./Additional Sessions Judge, Court No.19, Lucknow by order dated 30.07.2021 in Case Crime No.163 of 2020, under Sections 506, 386, 388, 419, 420, 467, 468, 471, 120-B I.P.C., Police Station-Gomti Nagar Vistar, District Lucknow, shall kept in abeyance.

District & Sessions Judge, Lucknow is directed to send the complete record of Bail Application No.3505 of 2021 decided by Special Judge, M.P. M.L.A./Additional Sessions Judge, Court No.19, Lucknow, forthwith.

Office is directed to communicate this order to the District & Sessions Judge, Lucknow for necessary compliance.

**Order Date :-** 5.10.2021

Amit/-