

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 43814 of 2019

**Applicant :-** Kajol Sharma

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

**Counsel for Applicant :-** Deba Siddiqui, Sri Ravi Kiran Jain Senior Adv, Swetashwa Agarwal

**Counsel for Opposite Party :-** G.A., Dilip Kumar, Rajarshi Gupta

**Hon'ble Saumitra Dayal Singh, J.**

1. Rejoinder affidavit to the counter affidavit filed by the informant is taken on record.
2. Counter affidavit filed by the State is taken on record.
3. Heard Sri Swetashwa Agarwal, learned counsel for the applicant; Sri Dilip Kumar, learned Senior Counsel, assisted by Sri Manish Singh, learned counsel for the informant as well as learned Government Advocate for the State and perused the material placed on record.
4. The instant bail application has been filed on behalf of the applicant - Kajol Sharma with a prayer to release her on bail in Case Crime No. - 442 of 2019, under Sections - 385, 506, 507, 201, 34 IPC & 67-A of Information Technology Act, Police Station - Kotwali, District - Shahjahanpur, during pendency of trial.
5. Learned counsel for the applicant submits, the applicant is accused of various offences being putting fear or attempt to put fear for extortion; criminal intimidation; criminal intimidation by anonymous communication; causing the evidence to disappear; publishing sexually explicit material through Whatsapp message and; of having common intention with other co-accused persons in commission of such offence.
6. It is seen that barring the offence under Section 36-A of I.T. Act, 2000, all other offences are bailable, however, most of the

offences are triable by Magistrate. As to the facts, the applicant appears to have first made a post on her Facebook account on 24.8.2019 making certain allegations whereafter the applicant remained missing. Her father appears to have lodged an FIR on 27.8.2019, after much failed attempts (as claimed) on earlier dates. In the meanwhile, according to the informant, in the present case, on 22.8.2019, he received a message on his Whatsapp account containing certain sexually explicit photographs allegedly involving him and also a demand of Rs. 5 crores to not make viral, such sexually explicit material. This led to the present FIR being lodged.

7. In such circumstances, suo motu Writ (Crl.) No. 2 of 2019 was entertained by the Supreme Court, pursuant where to, the applicant was first produced before that Court and where after orders were passed by Supreme Court to provide for safety and well-being of the applicant as also for her transfer from the educational institution wherein the present informant is the Manager to another college affiliated under the same university i.e. Meerut University. Perusal of those orders would also reveal that the applicant was allowed to meet her parents in Delhi under police protection.

8. At present, the proceedings before the Supreme Court have been closed upon admission having been made available to the applicant at another institution and in view of the Special Investigation Team having been entrusted with investigation into the allegation of commission of criminal offence against the applicant as also by the applicant and others. Under orders of the Supreme Court, a division bench has also been nominated by Hon'ble The Chief Justice (of this Court) to monitor investigation into such offences.

9. While the allegations made by the applicant against the

informant are not required to be gone into in detail in the present proceedings, however, it cannot be lost sight that serious allegations of repeated rape have been made. Further, it may also be noted here itself that a charge-sheet has been submitted against the informant under Section 376-C IPC.

10. It is also not disputed that the applicant has no criminal history and there is absolutely no allegation of applicant having indulged in similar offences at any earlier point of time. The allegations that may have been made against the father of the present applicant may not be relevant in the present proceedings, inasmuch as, he is not an accused person. Then, it also cannot be lost sight, at the relevant time, applicant was a student in college where the informant was the Manager, and therefore, in such relationship, purely on a *prima facie* basis, there cannot exist any presumption that the applicant if enlarged on bail, would be in a position to intimidate any witness or tamper with the evidence.

11. In that regard, according to the Investigating Agency, the mobile SIM of the no.- 8604207465 that had been used for commission of offence of extortion etc. stood in the name of one Divyanshu. The SIM has been recovered from one Padma, who is the sister of the co-accused Sanjay, whose mobile phone instrument had also been used. It is in that regard that the applicant is claimed to be a co-accused, inasmuch as, the photographs which are part of a larger video recording is claimed to have been prepared by the applicant herself using a camera installed on some special eye glasses.

12. At present, perusal of the counter affidavit filed by the State reveals that a detailed charge-sheet has been submitted against the applicant. Inasmuch as the investigation is claimed to have been successfully concluded and charge-sheet submitted, it has

to be taken note of that the applicant has remained in confinement since 25.09.2019 i.e. more than two months.

13. The bail application has been vehemently opposed by learned Government Advocate and the learned Senior Counsel appearing for the informant who have submitted that the charge-sheet itself records that the applicant has made best efforts to conceal vital evidence in the shape of the special eye glasses with camera that were used to prepare the objectionable recording.

14. According to the learned Senior Counsel for the informant, the recording that may have been prepared was doctored i.e. the images that were circulated were morphed. Though that piece of evidence may not be relevant in the instant case, the same would constitute vital defence evidence, in the other case, that had been registered against the informant, by the present applicant wherein charge-sheet under Section 376-C has already been submitted.

15. Also, it has been emphasized, it is not merely the period of sentence that may be weighed at this stage, but the gravity of the offence that has to be examined. Thus, it has been submitted that more than extortion based on circulation on sexually explicit material, it has to be seen that the applicant had herself prepared the recording and doctored and circulated that material only to malign and completely destroy the reputation of the informant. Such offences should not be lightly allowed to be passed. It has also been suggested that it would be better in the interest of justice that the trial may be concluded, as expeditiously as possible. However, the applicant may not be enlarged on bail as there is every likelihood that once enlarged on bail, the interest of fair trial would stand prejudiced.

16. Having heard learned counsel for the parties and having perused the record, without entering into the merits of the allegations and the counter allegation between the applicant and the informant as it is not for this Court to pre-judge the issue to any extent, at present, it has to be borne in mind that the offences alleged are mostly bailable and punishable with imprisonment that may extend up to five years. Next, it has to be noted that a detailed charge-sheet has already been submitted by Special Investigation Team constituted under the orders of the Supreme Court in this case. Besides the investigation being complete, there does not appear to exist any requirement or justification to continue with the further detention of the applicant, pending the trial.

17. There is also no room to entertain the plea that the detention of the applicant is necessary to allow the investigating agency or the prosecution to get hold of the special eye glasses (with camera) with which the photographs and the video recordings are claimed to have been prepared by the applicant. The applicant has already been charged with destruction of evidence. To allow for such continued detention, in such circumstances, would be to allow for heavy arm twisting and practically to enable the prosecuting agency an opportunity to force the applicant to self-incriminate, even if, the submissions advanced by learned senior counsel for the informant are accepted on face value. Such course is clearly impermissible. There is absolutely no criminal history of the applicant. Looking at the *inter se* position and relationship between the parties, it does not appear to the Court that there is any likelihood or possibility of evidence being tampered or the applicant running away from law, once she is enlarged on bail.

18. As to the submission based on gravity of offence, the

statutory scheme cannot be overlooked to impose any other view in the matter. Once the statute has made such offences bailable and punishable with imprisonment up to five years, there is no question to debate the gravity of offence from an independent perspective, *de hors* the statutory scheme. The penal statute also represents the societal values and perspectives. The Courts are not to look beyond the same, especially at such preliminary stage as grant of bail.

19. Insofar as the trial proceedings are concerned and in view of the charge-sheet having been submitted only recently and further since the matter is being monitored by the special bench constituted by Hon'ble The Chief Justice (of this Court), in view of the earlier orders passed by the Supreme Court, I do not consider it fit to pass any orders in that regard.

20. In the entirety of facts and circumstances of the case, let the applicant involved in the aforesaid crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressuring the witness, 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.

21. In case, of breach of any of the above conditions, the bail being granted shall be cancelled.

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

**Order Date :-** 4.12.2019

Prakhar