

Court No. - 16

Case :- BAIL No. - 3669 of 2021

Applicant :- Guruvinder Singh

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Atul Kumar Dwivedi, Vineet Bihari Patel

Counsel for Opposite Party :- G.A., Anand Shanker Asthana, Deepak Mishra, Dhruv Bhatt

Hon'ble Saurabh Lavania, J.

Heard Sri I.B. Singh, learned Senior Advocate assisted by Sri Atul Kumar Dwivedi, learned counsel for applicant, learned counsel for the complainant, learned A.G.A. for the side opposite and perused the record.

Present bail application has been filed by the applicant in Case Crime No.6 of 2021, under Sections- 354Ka, 354Kha, 354Ga and 354Gha, 376, 509, 323, 452, 504, 506 I.P.C., P.S.- Lalganj, District-Pratapgarh.

Learned Counsel for the applicant submitted that as per the FIR, the informant/victim is posted as Naib Tehsildar at District Pratapgarh. The FIR in issue was lodged on 02.01.2021 at about 07:26 hours. As per the allegations made in the FIR, the applicant committed crime i.e. rape with the informant/victim for the first time in the year 2012 in the premises situated at GTB Nagar, New Delhi. It is further stated that in the FIR that the applicant also has made obscene video clips of informant/victim. He further stated that it appears from the FIR that on the basis of obscene video clips and photographs, the applicant continued to commit crime with the informant/victim. It is also apparent from the FIR that in 2017, the informant/victim was appointed as Naib Tehsildar at district Pratapgarh. It further transpires therefrom that in Pratapgarh also, the applicant committed crime with informant/victim and took obscene

photographs. In the FIR, further allegations have been levelled, which are to the effect that account of informant/victim was operated by the applicant. The informant/victim was also threatened on phone and messages, as indicated in the FIR.

Learned Counsel for the applicant further submitted that in nutshell, the contents of FIR are to the effect that since 2012-2013 to the date of lodging of FIR, the applicant continued to commit crime i.e. rape with informant/victim on the basis of obscene video clips and photographs made by him.

Learned counsel for the applicant further submitted that the story, as alleged by prosecution, is improbable, as the informant/victim was major in the year 2012 and she never raised any alarm or objected or inform the concerned till lodging of FIR. Even after her joining as Naib Tehsildar at District Pratapgarh, the informant/victim never opposed the action of applicant or lodged the FIR. This FIR in issue has been lodged just to harass the applicant who was/is in love with the informant/victim. In fact this is a case of consent. The applicant met with informant/victim in the year 2012 in a coaching institute, as both were appearing in competitive examinations. The applicant and informant/victim were having affair and physical relations were established with the consent of informant/victim. The relationship continued till 2020. In 2020, on account of some dispute, the relationship was broken.

On a query being put at this stage, learned Counsel for the applicant submitted that the marriage of informant/victim was settled by her parent, as such, she refused to continue the relationship with the applicant and it appears that for this reason as also that the victim became Naib Tehsildar and the applicant could not crack any examination, the victim broken the relations with the applicant and lodged the FIR, however, the applicant is still ready to solemnize marriage with informant/victim.

Learned Counsel for the applicant further submitted that after lodging the FIR in issue, the applicant was apprehended and taken into custody. The concerned police authority recovered one hard disk and six mobile phones, out of which, only two mobile phones were in use at that point of time. Initially the FIR was lodged against the applicant and unknown persons. The Investigating Officer after investigation submitted the charge-sheet only against the applicant. This charge-sheet was filed by Crime Branch, as the investigation was transferred to Crime Branch on an application of informant/victim. During the investigation, the Investigating Officer recorded the statement(s) of person concerned particularly the friend of victim/informant namely Ms. Jyoti Pathak. Her statement was recorded after considering the statement of informant/victim, according to which, for the first time the crime was committed by applicant in the room/premises of Jyoti Pathak. This witness has not supported the story of prosecution. As per the statement of this witness, the applicant and informant/victim were having live in relationship.

Elaborating aforesaid aspect, learned counsel for the applicant further submitted that as per the statement of informant/victim, the victim went to room/premises of Jyoti Pathak when she was sick and their in the same situation, the applicant committed crime, however, the witness Jyoti Pathak has stated that informant/victim never came to my room/place/premises in such a condition and neither stayed at my room for 6-7 days. Further, as per the statement of Jyoti Pathak, neither rape was committed with victim at her room nor the applicant went there.

The Investigating Officer after considering the statements of informant/victim also recorded the statement(s) of S.S. Bhalla, Smt. Shobha Mukhija, Chahat Singh, Smt. Sarvjeet Kaur, Vikas Malik and Manager of Skin Treatment Clinic. The statements of these witnesses were recorded at Delhi. He further submitted that statement of S.S.

Bhalla and Smt. Shobha Mukhija were recorded being the owners of the house No. 1664 GTB Nagar, New Delhi and House No. 1674, GTB Nagar, New Delhi respectively, as the informant/victim in her statement before the Investigating Officer stated that she resided with her friend Durgesh Nandani either in house No. 1664 or 1674 GTB Nagar, New Delhi. The statement of informant/victim is incorrect rather false. It is in view of the statements of these witnesses. As per the statement of S.S. Bhalla and Smt. Shobha Mukhija, the houses, as indicated by informant/victim, were never rented out by their owners.

The statement of Chahat Singh was recorded by the Investigating Officer after taking note of the affidavit filed in favour of the applicant. As per this statement also, the allegations of committing crime with informant/victim by the applicant are false. This independent witness has stated that the applicant and informant/victim were having live in relationship and in almost same terms, Smt. Sarvjeet Kaur, land lady of the applicant, stated before the Investigating Officer that the applicant and victim were very close to each other. Vikas Malik also stated before the Investigating Officer that the applicant and victim were living in live in relationship. The statement of these two witnesses also verifies the story that the informant/victim and the applicant were living at Delhi in live in relationship.

He further submitted that the applicant financially supported the informant/victim on several occasions even for her skin treatment, which was carried out at Skino's Clinic, Kamla Nagar, New Delhi. He submitted that the statement of Manager of this Clinic was also recorded. Based on the statement of Manager of said Clinic, learned counsel for the applicant further submitted that the applicant visited the said clinic with informant/victim and also made payments there.

He further submitted that the statement of Smt. Gauri Sharma was also recorded by the Investigating Officer. Her statement was recorded

after taking note of the statement of informant/victim to the effect that she resided at first floor in the house No. 2060, GTB Nagar, New Delhi. As per the statement of Smt. Gauri Sharma, the premises was rented out to the informant/victim and she was not a defaulter so far as the payment of rent is concerned. The Investigating Officer also enquired about the applicant and in response, this witness Smt. Gauri Sharma stated that in Girls PG, male members are prohibited.

The statement of Shishya Singh Rathore was also recorded by the Investigating Officer. She was also a student in coaching institute. This witness has also stated before the Investigating Officer that the applicant and the informant/victim were living in live in relationship.

To establish the fact related to live in relationship, learned counsel for the applicant also submitted that financial support was extended to the victim even for purchasing a KWID Car that too after appointment of informant/victim as Naib Tehsildar at District- Pratapgarh. He submitted that this fact is evident from the statement of Shishya Singh Rathore as also from the Bank transactions. In this regard, Rs. 1.67 Lakhs and odd were transferred by the applicant on 30th July, 2018 and the Car was booked in the name of informant/victim on 16th August, 2018. Prior to this, the applicant also deposited an amount to the tune of Rs. 2,000/- as booking amount.

He further submitted that during relationship between the applicant and informant/victim which started in 2012 and continued till February, 2020, approximately transaction of amount to the tune of Rs. 19 Lakhs and odd took place between the applicant and informant/victim. Out of Rs. 19 Lakhs and odd deposited/credited by the applicant in the account of informant/victim, Rs. 17 Lakhs and odd were received back by the applicant from her. This transaction is not disputed by the side opposite.

Learned counsel for the applicant further submitted that in fact no offence is committed by the applicant and this is a case of consent. On

being annoyed or for some other reason best known to the informant/victim, which can be the settlement of her marriage with other person, the FIR in issue has been lodged against the applicant, as such, the applicant has not committed any crime. He also stated that there is no evidence available with prosecution against the applicant.

In continuation, learned counsel for the applicant further submitted that hard disk as also two mobiles were recovered by the police during investigation and no evidence has been collected therefrom. The charge-sheet has been filed against the applicant only under the pressure of administration. He submitted that in the charge-sheet the Investigating Officer has indicated that the witnesses have not stated anything in favour of informant/victim and despite of this, the charge-sheet has been filed against the applicant. He also stated that the advance payment of AC, which is operational in the premises of informant/victim, was given by the applicant and the rest amount i.e. 10,000/- was paid by the informant/victim through her cheque. He further submitted that the informant/victim was also using easy day card of applicant. This card was also used by the victim at her native place i.e. Fatehpur as well as at her place of posting i.e. Pratapgarh.

Learned counsel for the applicant on the basis of photographs has reiterated earlier arguments that the applicant and the informant/victim were having affair and were living in live in relationship. He submitted that in these circumstances, this is a case of live in relationship as also of consent and not of rape. The prayer is to allow the bail application and release the applicant on bail.

Learned AGA as also learned counsel for the complainant opposed the prayer for bail. It is submitted that the story of prosecution as narrated in the FIR is intact. The informant/victim in her statement made under Sections 161 and 164 Cr.P.C. supported the story of prosecution. There is no variation in the same.

It is further stated that as per Section 114-A of Evidence Act, the presumption is against the applicant. In this regard, further reliance has been placed on Section 53 of Evidence Act. It is also stated from the side opposite that the applicant, on the basis of video clips and photographs, created pressure on the informant/victim and the victim was under duress and he is the person alone who was operating the account of informant/victim. All the transactions of Bank account were made by the applicant. The pressure was upto the extent that the phone number(s) of the applicant were mentioned in the record of Bank. The messages of all transactions made from account of informant/victim could only be seen by the applicant alone. The informant/victim even after being selected as Naib Tehsildar is not in a position to operate her own Bank account as per her own way.

Learned counsel for the side opposite further stated that this is not a case of consent rather it is a case of submission/surrender. The informant/victim submitted herself before the applicant under the mental pressure created by him as also the threat of reputation. The informant/victim has supported the story of prosecution, as such, at this stage, it cannot be presumed that the offence has not been committed by the applicant. It is also stated that in the FIR, specific allegations against the applicant is to the effect that obscene photographs were sent by him on the mobile phones of sister and mother of informant/victim, however, neither the statements of these witnesses were recorded nor the photographs sent by the applicant on mobile phones of these persons were taken into account by the Investigating Officer during investigation.

On the basis of supplementary affidavit dated 01.10.2021 filed in the Court today, which is taken on record, to which the counsel for the applicant has declined to file the reply, it is further submitted that the copy of messages and photographs annexed therewith are those which were sent by the applicant to sister and mother of informant/victim.

It is also submitted that no amount was given by the applicant for purchasing a car. The amount mentioned in quotation was sanctioned by HDFC Bank i.e. Rs. 4,03,299.00 and the informant/victim is paying installments regularly.

It is further submitted that the statements of all witnesses as indicated in the FIR were not recorded by the Investigating Officer. It is submitted that statements of all witnesses are relevant but most relevant witnesses in the instant case are the mother and sister of informant/victim, as obscene photographs were sent by the applicant on their mobile phones. It is further stated that at the stage of bail, besides other aspects of case, the conduct of applicant is also required to be looked into by this Court even if it is presumed that the informant/victim was living with the applicant in live in relationship, as the conduct of the applicant is of such a nature that the prayer of the applicant for releasing him on bail is liable to be rejected.

He submitted that no person even the husband, what to say about a boyfriend, can play with dignity of a woman or try to distort/damage the reputation of a woman and even if it prima facie appears that the concerned is involved in such an act then too he should be treated strictly and no benevolence should be extended in his favour. In this case, some messages and photographs were sent by the applicant to sister and mother of informant/victim, which are not clear, as such, it is to be presumed that the same are obscene photographs and were sent with an intention to distort/damage the reputation of victim and one of the messages shows that the applicant, at the time of sending the same, was having 6 GB data pendrive bearing some obscene material related to victim. The relevant message, pointed out, reads as under:-

"Meri Kismat achhi thi jo maine
screenshot ke liye
Ye sab ek pendrive me apko de dunga. 6
GB data hai jo usne khud shoot kia tha.

Aur blackmailer mujhe hi keh dia.
Shamelessly cheating on me, don't know
what she want to do with her life and
why she's playing with everybody's trust"

It is further stated that it appears from record that the applicant belongs to good family and he is having good background. A person of such a background is not expected of to viral any message or obscene photograph to anyone. This type of conduct by a person is liable to be deprecated by the Court, more so when, the case is related to a woman/female. The public reputation of a female is also liable to be looked into. In this case, the informant/victim is dealing with public being an employee of State of U.P. as Naib Tehsildar.

It is further stated that specific averment made in supplementary affidavit dated 01.10.2021 filed in the Court today which is to the effect that the applicant sent obscene photographs to the sister and mother of informant/victim has not been denied. Accordingly, the prayer is to reject the bail application.

Sri Singh, learned Senior Advocate in response to argument of learned counsel for the side opposite based on averments made in supplementary affidavit dated 01.10.2021 submitted that the copy of photographs annexed therewith are liable to be ignored, as the same are forged. In this regard, he placed reliance on photographs annexed at page Nos. 6, 7, 8 and 9 of supplementary affidavit. Elaborating his argument, learned Senior Advocate submitted that all photographs annexed at page Nos. 6, 7, 8 and 9 are the same photographs, which as per affidavit, were taken at about 2.51 PM and these pages have been annexed with the affidavit only just to mislead and prejudice this Court and moreover, the messages are not complete rather edited.

On a query being put about the photographs annexed with supplementary affidavit at page No. 5, which as appears were taken at 2.39-2.44 PM, learned counsel for the applicant submitted that they are

not visible. Moreover, the photographs annexed at page Nos. 6, 7, 8 and 9 are also not visible. However, learned counsel for the applicant could not reply the query of Court regarding timings of photographs.

In response to the aforesaid argument of learned counsel for the applicant which is to the effect that none of the photographs are visible and clear, learned counsel for the side opposite submitted that these photographs are obscene photographs and same were sent by the applicant to sister of informant/victim.

Before coming to conclusion, considering the facts of the case, it would be appropriate to take note of expression(s) "*Dignity*" and "*Privacy*".

Dignity is the quality of being honourable, noble, excellent or worthy. With a human regarded as the most supreme living creature, dignity, in its appealing sense, is better referred to as human dignity. It is the conceptual basis for the formulation and execution of human rights and is neither granted by the society nor can it be legitimately granted by the society. An imperative implication of human dignity is that every human being should be regarded as a very invaluable member of the community with a uniquely free expression of their right to life, integrated bodily attributes and their spiritual nature.

Human dignity is a sense of self-worth. Therefore, dignity is a sense of pride in oneself that a human being has with them. This conscious sense makes them feel that they deserve respect and honour from other human beings. Many scholars argue that if a human being is in a humiliating or compromising situation then this is a major threat to their dignity.

Regarding "human dignity", the Hon'ble Apex Court in the case of *M. Nagraj v. Union of India*, (2006) 8 SCC 2012 expressed that human dignity is a right covered under Article 21. The expression "life" in Article 21 does not connote merely physical or animal existence. The right to life

includes right to live with human dignity. It is the duty of State not only to protect human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot be given. It simply is. Every human being has dignity by virtue of his existence.

In regard to "*Privacy*", the Hon'ble Apex Court in the case of ***K.S. Puttaswamy and another v. Union of India and others reported in (2017) 10 SCC 1***, held that it is a right covered under Article 21 of the constitution of India. The relevant paras are as under:-

"297. What, then, does privacy postulate? Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognizing a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity

in creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.

402. "Privacy" is "[t]he condition or state of being free from public attention to intrusion into or interference with one's acts or decisions" [Black's Law Dictionary (Bryan Garner Edition) 3783 (2004)]. The right to be in this condition has been described as "the right to be let alone" [Samuel D. Warren and Louis D. Brandeis, "The Right To Privacy", 4 Harv L Rev 193 (1890)]. What seems to be essential to privacy is the power to seclude oneself and keep others from intruding it in any way. These intrusions may be physical or visual, and may take any of several forms including peeping over one's shoulder to eavesdropping directly or through instruments, devices or technological aids.

479. Both the learned Attorney General and Shri Sundaram next argued that the right to privacy is so vague and amorphous a concept that it cannot be held to be a fundamental right. This again need not detain us. Mere absence of a definition which would encompass the many contours of the right to privacy need not deter us from recognising privacy interests when we see them. As this judgment will presently show, these interests are broadly classified into interests pertaining to the physical realm and interests pertaining to the mind. As case law, both in the US and India show, this concept has travelled far from the mere right to be let alone to recognition of a large number of privacy interests, which apart from privacy of one's home and protection from unreasonable searches and seizures have been extended to protecting an individual's interests in making vital personal choices such as the right to abort a foetus; rights of same sex couples-including the right to marry; rights as to procreation, contraception, general family relationships, child-bearing, education, data protection, etc. This argument again need not detain us any further and is rejected.

560. The most popular meaning of "right to privacy" is-"the right to be let alone". In *Gobind v. State of M.P.* [*Gobind v. State of M.P.*, (1975) 2 SCC 148 : 1975 SCC (Cri) 468], K.K. Mathew, J. noticed multiple facets of this right (paras 21-25) and then gave a rule of caution while examining the contours of such right on case-to-case basis.

636. Thus, the European Union Regulation of 2016 [Regulation No. (EU) 2016/679 of the European Parliament and of the Council of 27-4-2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive No. 95/46/EC (General Data Protection Regulation).] has recognised what has been termed as “the right to be forgotten”. This does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification. If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest. Such a right cannot be exercised where the information/data is necessary, for exercising the right of freedom of expression and information, for compliance with legal obligations, for the performance of a task carried out in public interest, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. Such justifications would be valid in all cases of breach of privacy, including breaches of data privacy.”

The Hon'ble Apex court while considering the issue of a conflict between the right to privacy of one person and the right to a healthy life of another person has held that, in such situations, the right that would advance public interest would take precedence.”

No person much less a woman would want to create and display gray shades of her character. In most of the cases, like the present one, the women are the victims. Capturing the images and videos with consent of the woman cannot justify the misuse of such content once the relation between the victim and accused gets strained as it happened in the present case. In matters like the present one, any accused will surreptitiously outrage the modesty of the woman and misuse the same in the cyber space unhindered. Undoubtedly, such an act will be contrary to the larger interest of the protection of the woman against exploitation and blackmailing, as has, prima facie, happened in the present case.

It would be appropriate to observe that the sexually explicit images or videos may be made by a partner of an intimate relationship with the knowledge and consent of the subject, or it may be made without his or her knowledge, however, the same if used as a form of revenge or harassment would definitely distort/damage the dignity of concerned and the Court in such type of cases cannot close its eyes and being *parens patriae* and protector of fundamental rights, the Court should come forward to protect the right of the subject and similarly the Court should stringently deal with the person concerned. Moreover, the possession of the material may be used by the perpetrators to blackmail the subjects into performing other sex acts or to coerce them into continuing the relationship, or to punish them for ending the relationship.

This Court after considering the entire aspects of the case as indicated hereinabove, including factual aspect of the case, which relates to live in relationship, which has been disputed by the informant/victim and statements of victim recorded under Sections 161 & 164 Cr.P.C. in the light of above referred provision(s) of Evidence Act, wherein, she has supported the version of FIR as also the conduct of the applicant, which relates to sending obscure photographs and messages to sister of informant/victim as indicated in supplementary affidavit dated 01.10.2021, to which, no reply has been filed despite of asking in this regard to learned counsel for the applicant, is not inclined to enlarge the applicant on bail.

The instant bail application is thus *rejected*.

Order Date :- 4.10.2021

Arun/-