

(AFR)

Neutral Citation No. 2023:AHC:109491

Reserved :- 17.05.2023

Delivered :- 19.05.2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 76

CRIMINAL MISC. BAIL APPLICATION No. - 10374 of 2023

Applicant :- Prakash Narayan Sharma @ Babali

Through :- Sri V.P. Srivastava, Senior Advocate assisted by Sri
Vijay Kumar Mishra, Advocate

vs.

Opposite Party :- State of U.P.

Through :- Sri Sunil Srivastava, A.G.A. and Sri Yogendra
Kumar Srivastava, Advocate for informant

CORAM :- HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Applicant – Prakash Narayan Sharma @ Babali has approached this Court for bail in Case Crime No. 10 of 2023 under Sections 147, 323, 354, 354-K, 406, 504, 506, 376 I.P.C., Police Station- New Agra, District- Agra. He is in jail since 09.02.2023.

2. Before entering into merit of this case, it would be apt to advert to nature of relationship between a lawyer and his client which is solely founded on trust and confidence, however, the facts of present case are absolutely contrary to it.

3. Informant of present case is the victim herself and it has been alleged that she approached the applicant as his client to take up her cases and it appears that during frequent interactions, they became close and entered into relationship

which includes victim to visit along with applicant and his wife to various places as well as along with applicant only to various places. Number of photographs are placed on record that victim was comfortable with applicant even in presence of his wife. The photographs also indicate that they were very close. Even certain photographs are also recovered which shows and that applicant and victim was not looking embarrassed rather comfortable even when their photographs are clicked in their birthday suits in intimating positions i.e. they were deeply involved in physical relationship also.

4. The victim has alleged that applicant has gained her confidence and even victim has provided a room on rent for him as there was certain dispute between applicant and his wife and that victim has given a loan of Rs. 40 lakh to applicant as he wanted to contest an assembly election after taking it from her elder sister but applicant not only refused to return money but disappeared for some time also and on the date of occurrence, i.e. 04.01.2023, on a road nearby Court campus, a scuffle took place between victim and applicant and his associates wherein she was mercilessly beaten even on her private parts.

5. The victim has further disclosed that earlier, the applicant has posed himself to be an influential person being close to prominent persons including Judges and officers and that he was involved in preparing porn films and has shown multiple unsolicited photographs of other women and threatened the victim to act in terms of direction of applicant and even to allow him to click her photographs in intimating gestures and

positions and has repeatedly made physical relationship with victim against her wishes also and has threatened of dire consequence, if victim refuses to act in terms of direction of the applicant.

6. Sri V.P. Srivastava, Senior Advocate assisted by Sri Vijay Kumar Mishra, learned counsel for applicant submits that applicant is not disputing that he has a very comfortable relationship with victim but it was only consensual relationship and victim has accompanied with applicant even along with his wife to various places and have very close intimacy with victim. Even the photographs of various places as well as intimate photographs have also been denied.

7. Learned Senior Advocate has further submitted that this relationship can be termed as a honeytrap that initially the victim has not objected of taking intimated photographs with applicant, even in their birthday suits. However, the allegation of money as mentioned by victim has been vehemently denied that it was the applicant who paid the victim and she refused to return and started blackmailing that in case huge amount has not been paid to her, she will make the circumstances worse and for that applicant has to face social disgrace.

8. Learned Senior Advocate has further submitted that it may be a case where strong intimacy and consensual relationship between applicant and victim become sour by passing time. No independent witness has been examined in regard to allegation of assault by applicant and his associates on a road near the Court and that victim who has already

given her statement during investigation and has also given number of photographs to prosecution which are part of record, therefore, there is no likelihood that applicant may influence the victim.

9. Prayer for bail have been vehemently opposed by S/Sri Sunil Srivastava, learned A.G.A. for State and Yogendra Kumar Srivastava, learned counsel for victim and submitted that applicant is an advocate only for name and his real business was to prepare porn films and for that he used his women clients earlier also and victim was also trapped in the web of porn industry.

10. Applicant has woven a web that initially he acted to be nice with victim and has gained her confidence and trust and entered into physical relationship as well as to visit many places along with her. He has also allowed victim to be a friendly entrance in his house even in presence of his wife. The nature of photographs prima facie indicate that applicant was not ashamed to be clicked along with victim in their birthday suits and that victim has remained consistent in her statement under Sections 161 and 164 Cr.P.C. about above referred modus-operandi of applicant and that he has repeatedly made physical relationship with victim against her will by extending threat of putting her unsolicited photographs for the purpose of pornography and that victim has given huge amount of money on loan to applicant but he has refused to return the same.

11. LAW ON BAIL - A SUMMARY

(A) The basic rule may perhaps be tersely put as bail, not jail.

(B) Power to grant bail under Section 439 Cr.P.C., is of wide amplitude but not an unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course or in whimsical manner.

(C) While passing an order on an application for grant of bail, there is no need to record elaborate details to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal. However, a Court cannot completely divorce its decision from material aspects of the case such as allegations made against accused; nature and gravity of accusation; having common object or intention; severity of punishment if allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of witnesses being influenced by accused; tampering of evidence; character, behaviour, means, position and standing of accused; likelihood of offence being repeated; the frivolity in the case of prosecution; criminal antecedents of accused and a prima facie satisfaction of Court in support of charge against accused. The Court may also take note of participation or part of an unlawful assembly as well as that circumstantial evidence not being a ground to grant bail, if the evidence/ material collected establishes prima facie a complete chain of events. Parity may not be an only

ground but remains a relevant factor for consideration of application for bail.

(D) Over crowding of jail and gross delay in disposal of cases when undertrials are forced to remain in jail (not due to their fault) may give rise to possible situations that may justify invocation of Article 21 of Constitution, may also be considered along with other factors.

(See, **State Of Rajasthan, Jaipur vs. Balchand @ Baliay** (AIR 1977 SC 2447 : 1978 SCR (1) 535; **Gurcharan Singh vs. State (Delhi Administration)**, (1978) 1 SCC 118); **State of U.P. vs. Amarmani Tripathi**, (2005) 8 SCC 21; **Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr** (2010)14 SCC 496; **Mahipal vs. Rajesh Kumar**, (2020) 2 SCC 118; **Ishwarji Mali vs. State of Gujarat and another**, 2022 SCC OnLine SC 55; **Manno Lal Jaiswal vs. The State of U.P. and others**, 2022 SCC OnLine SC 89; **Ashim vs. National Investigation Agency** (2022) 1 SCC 695; **Ms. Y vs. State of Rajasthan and Anr** :2022 SCC OnLine SC 458; **Manoj Kumar Khokhar vs. State of Rajasthan and Anr.** (2022)3 SCC 501; and, **Deepak Yadav vs. State of U.P. and Anr.** (2022)8 SCC 559)

12. In the present case, applicant has declared himself to be an active advocate and a person having luxurious car and luxurious lifestyle. The narration of facts in first information report as well as statement of victim recorded under Sections 161 and 164 Cr.P.C. are consistent as well as that the applicant

has himself not denied that victim was his client. Victim used to visit him for the purpose of discussing cases and later on both of them became intimated and their intimacy was so open that she was comfortable with applicant even in presence of applicant's wife. Both of them have used to visit many places together as well as along with his wife and comfortably clicked photographs being together.

13. There is substance in argument of learned Senior Advocate that due to certain monetary dispute, consensual relationship between applicant and victim becomes sour. However, considering the nature of evidence collected during investigation, specifically, nature of photographs placed on record of applicant and victim being intimated even in their birthday suits prima facie indicates that applicant was having some other interest and was engulfed in such activity instead of to be active and diligent towards his profession. It also appears that he used to have photographs with dignitaries including Judges to show him to be a very influential person. It also appears that victim was trapped in the web of pornography created by applicant and she was forced to act in terms of directions of applicant including to have physical relationship with him as well as to allow him to have photographs in indecent manner. As such it may not be a case of honeytrap rather the applicant has acted beyond relationship of an advocate and client and entered in an arena where social boundaries were broken and later on led to various disputes and allegations which includes financial dispute also for that there are rival claims. The allegation of pornography does not

appear to be prima facie substantiated with evidence collected during investigation and thereafter the victim has lodged the F.I.R. and contents thereof remained consistent in her statement recorded under Sections 161 and 164 Cr.P.C.

14. Above circumstances such as factor of long consensual relationship, nature of photographs, nature of evidence in regard to allegation of pornography and rival claims on financial dispute, may be tilt towards applicant for consideration of his bail application, however, a very crucial factor still goes against applicant that he is well acquainted with victim and have intimacy also and since during trial statement of victim has not been recorded till date, therefore, at this stage, if applicant gets bail, he will definitely try to influence her.

15. Therefore, considering overall aspects of present case, position of applicant and nature of allegations, I do not find any substantial ground to grant bail to applicant at this stage. Accordingly, bail application is hereby **rejected** and Trial Court shall take all endeavour to record statement of the victim expeditiously, preferably within a period of three months from today, if there is no legal impediment.

16. Registrar (Compliance) to take steps.

Order Date :- 19.5.2023

Nirmal Sinha

[Saurabh Shyam Shamsbery, J.]