

**Court No. - 67**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 26703 of 2021

**Applicant :-** Raju

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

**Counsel for Applicant :-** Sayed Sohail Asgar

**Counsel for Opposite Party :-** G.A.

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

Heard Sayed Sohail Asgar, learned counsel for the applicant and learned A.G.A. Perused the record.

After getting his second bail i.e. Criminal Misc. Bail Application No.68/2021 rejected from the Court of Special Judge (POCSO Act), Kaushambi on 11.6.2021, the applicant Raju has knocked the door of this Court invoking the jurisdiction under Section 439 of Cr.P.C. The applicant is behind the bar since 20.02.2021 in connection with Case Crime No.65 of 2021, u/s 376-D I.P.C. and Section 5/6 of Protection of Children from Sexual Offences Act, 2012, P.S.-Akil Sarai, District Kaushambi.

At the very outset learned counsel for the applicant has drawn attention of the Court to the F.I.R. lodged by the victim ██████ herself on 20.2.2021 at 07.33 hours for the incident said to have taken place on 19.02.2021 at 11.00 hours u/s 376-D, 392, 323, 504, 506 I.P.C. and Section 5/6 of POCSO Act. However, after the investigation the Police has dropped all other sections except Section 376-D I.P.C. and Section 5/6 POCSO Act. The

instant F.I.R. has been lodged nominating the accused Raju (the applicant), Gulshan, Satyam and one unknown. As per text of the F.I.R., the victim Miss 'X' (15 years) at around 8.00 in the morning went to learn the stitching at the Stitching Center Myohar and she talked to her boyfriend Raju on phone to meet him. When the victim girl came out from the stitching center around 11.00 A.M., she had gone with her boyfriend Raju on his motorcycle to visit Myohar, where they reached at the culvert of a local river in a secluded place. During the course of conversation, an offer was made by the applicant to have sex with his girlfriend (the victim). Despite of stiff resistance by the victim, the applicant was establishing physical relationship with her. During this period, all of a sudden three persons reached there, abused and beaten the applicant and snatched his mobile. Thereafter two out of said three persons have crushed the body and soul of the victim to quench their rapacious animal instincts. When these both persons performing this abhorring lascivious act, they were taking the name of each other as Gulshan and Satyam, that is how the victim came to know the names of these persons.

Contention raised by learned counsel for the applicant is that a delayed F.I.R. was lodged on the next day of the incident giving an ample time to cook up an imaginary story falsely implicating the applicant. Furthermore, learned counsel for the applicant

has drawn attention of the Court to the statements of the victim recorded u/s 161 and 164 Cr.P.C., in which she has admitted that the applicant is her boyfriend and he was establishing relationship with her after having positive nod from her. Unfortunately, when the victim was busy in that act, remaining co-accused persons also reached on the spot and all the three have jointly committed this offence.

Learned counsel for the applicant, from the text of the F.I.R. and the statements of the victim u/s 161 and 164 Cr.P.C., has tried to carve out the applicant from this nefarious offence taking the plea that the victim was his beloved and he has got every right to have premarital sex with his girlfriend and whatever act the applicant was doing, was after having the tacit consent of the victim. It is the remaining three other co-accused persons, who are strangers, have committed rape with the victim girl. The applicant is not the member of that gang nor has any association with the co-accused persons.

I am afraid to accept the contentions raised by learned counsel for the applicant on many scores :

i) The moment the applicant submits that the victim is his beloved, it was his binding duty to protect the dignity, honor and reputation of his girlfriend. If a girl is major one, then to have sex with her consent is not an offence, but certainly it is

unethical and immoral and also not in consonance with the established social norms of the Indian society.

ii) The applicant remained silent spectator when the co-accused persons were brutally sexually assassinating his beloved in front of him and no effort to put a stiff resistance was made by him so that the soul and body of the victim could be saved from further butchering by these flesh vultures.

iii) The conduct of the applicant is highly deplorable and unbecoming of a boyfriend, who could not save his girlfriend from these offenders. The chivalrous boyfriend (the applicant), as per the statement of the victim u/s 164 Cr.P.C., has taken her girlfriend (the victim) to the police station to lodge the F.I.R. and by doing this he alleged to have performed his duty qua her girlfriend.

It is the stage of bail and it cannot be said with certainty that the applicant has got no association or connection with remaining co-accused persons, as he himself was party to the same nefarious crime as the co-accused persons are said to have committed. These all are the matters of appreciation during trial.

Looking to the nature of offence, its gravity and the evidence in support of it and the overall circumstances of this case, I am not inclined to exercise my discretionary power u/s 439 Cr.P.C. in

favour of applicant, therefore, the prayer for bail of the applicant is REJECTED.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

**Order Date :- 21.10.2021**

M. Kumar