

**A.F.R.****Court No. - 83****Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 32824 of 2020**Applicant :-** Sandeep Kumar Mishra**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Pulak Ganguly, Virendra Kumar Mishra**Counsel for Opposite Party :-** G.A., Shivam Yadav**With****Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 12486 of 2022**Applicant :-** Chandan Kumar**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Virendra Kumar Mishra, Sudhir Mehrotra**Counsel for Opposite Party :-** G.A., Aditya Yadav, Shivam Yadav**Hon'ble Krishan Pahal, J.**

1. Heard Shri Sudhir Mehrotra, Shri Pulak Ganguly, learned counsels for the applicants and Shri Shivam Yadav, learned counsel for the informant as well as Shri V.K.S. Parmar, learned A.G.A. for the State.

2. Since these bail applications arise out of the same incident, they are being decided by this common order.

3. The present bail applications have been filed by the applicants in Case Crime No.511 of 2019, under Sections 376-D, 342 and 506 I.P.C., Police Station Rohaniya, District Varanasi, with the prayer to enlarge them on bail.

**PROSECUTION STORY:**

4. As per the prosecution story, a first information report was lodged at P.S. Daurala, District Meerut stating that the informant is a

resident of village Machchari, P.S. Daurala and is connected to Param Dham Nyas, Arihantpuram, Valeedpur, Daurala and his wife aged about 24 years alongwith other colleagues is living at Baroranpur, P.S. Rohaniya, Varanasi for the last one year. She travels off and on to Meerut and Varanasi for the works of the organization. At Varanasi, the informant and his wife used to live in a rental house of one Sushil Patel. On 18.06.2019, the informant had come to Meerut and his wife along with other colleagues of the organization were left behind at Varanasi. On 03.08.2019, the wife of the informant came to Meerut from Varanasi and told him about the incident which happened with her at Varanasi. She told the informant that on 01.07.2019 at about 10:00 AM, Chandan Kumar s/o Ram Narayan and Sandeep s/o of Dev Kumar Mishra had raped her in her room. When she had tried to raise alarm, Sandeep is stated to have closed her mouth with his hand. After sometime one Ankit s/o Satveer is said to have reached there, at which the accused persons had left the room and Ankit is said to have slapped Chandan, but the duo is said to have escaped on their motorcycle. When the informant asked the said perpetrators of crime about the incident, they are said to have threatened him that he alongwith his wife shall be ruined by them. The said application was moved at the police station on 05.08.2019 and it was registered at Case crime No.349 of 2019 under Sections 376-D, 342, 506 I.P.C. at P.S. Daurala, District Meerut.

5. The said FIR was sent to be investigated by the police of P.S. Rohaniya, District Varanasi on a letter sent by S.S.P., Meerut as the matter fell within the jurisdiction of District Varanasi. The F.I.R. was lodged at FIR No. 511 of 2019 at P.S. Rohaniya on 09.09.2019.

#### **RIVAL CONTENTIONS:**

##### ***For Applicants:***

6. Learned counsels for the applicants have stated that the victim was medically examined at District Hospital, Varanasi on 12.09.2019

and no internal or external injury was found on her body to corroborate the prosecution allegations. The statements of the victim recorded under Sections 161 and 164 Cr.P.C. are in verbatim of the allegations levelled in the FIR. Learned counsels have further stated that they have been falsely implicated in the case as they had enquired about the illegal activities being undertaken by the victim and other activists of the Ashram. The story has been cooked up just to harass the applicants and to dissuade them from bringing forward their illegal activities.

7. Learned counsels have further stated that the prosecution had created additional evidence by introducing new witnesses and filed their affidavits before S.S.P., Meerut, which is hit by Section 162 Cr.P.C. and are not admissible in law. Learned counsels have further stated that one of the witness Smt. Sanjana had even filed another affidavit on 23.09.2019, sworn at Meerut, denying the contents of her earlier affidavit. The said affidavit has been annexed as annexure no.7 to the Criminal Misc. Bail Application No.23824 of 2020. Learned counsels have further stated that it is pertinent to mention that prior to 06.08.2019, no other first information report was lodged by any of the followers of the founder 'Janeu Kranti Abhiyan' Chandra Mohan. It is the said godman Chandra Mohan who had got the FIRs' lodged against the revolting disciples of 'Janeu Kranti Abhiyan'. Learned counsels have brought on record a chart of the FIRs' lodged at the instance of godman Chandra Mohan against his disciples not falling in line with him, which is reproduced as below:-

<i>Case Crime No.</i>	<i>Under Section</i>	<i>Police Station</i>	<i>District</i>	<i>Informant</i>	<i>Accused</i>
349 of 2019	376.D, 342, 506 IPC	Daurala 26.08.2020	Meerut	Neeraj Kumar	Chandan Kumar Sandeep
352 of 2019	386, 295, 500, 120.B, 504, 506 IPC and 66.A, 67 I.T. Act	Daurala 06.08.2019	Meerut	Smt. Sonia	Chandan Deepak, Akash, Pushpendra, Vishal
456 of 2019	504, 506, 500	Nai Mandi	Muzaffar	Amit Kumar	Chandan

	<i>IPC and 66, 67 I.T. Act</i>	<i>07.08.2019</i>	<i>Nagar</i>		<i>Deepak, Akash, Vishal, Pushpendra</i>
<i>260 of 2019</i>	<i>500, 506 IPC and 66 I.T. Act</i>	<i>Mandi Dhanura 10.08.2019</i>	<i>J.P. Nagar</i>	<i>Rajesh</i>	<i>Deepchand, Karmvir</i>
<i>327 of 2019</i>	<i>386, 504, 506 IPC</i>	<i>Titawi 08.10.2019</i>	<i>Muzaffar Nagar</i>	<i>Vinod Kumar</i>	<i>Rajeev</i>
<i>1028 of 2019</i>	<i>418, 420, 506, 384 IPC and 66.D, 67 I.T. Act</i>	<i>Kotwali Nagar 25.10.2019</i>	<i>Muzaffar Nagar</i>	<i>Smt. Pankaj</i>	<i>Vinod Kumar, Jitendra, Amit, Chintu, Anil, Monu, Jitendra, Devendra</i>
<i>30 of 2020</i>	<i>376.D, 506 IPC and 5/6 POCSO Act</i>	<i>Hasanpur 18.01.2020</i>	<i>J.P. Nagar</i>	<i>Km. Bhanu Priya</i>	<i>Kovind Chauhan, Jaivir Chauhan, Pushpendra Chauhan, one boy unknown</i>
<i>224 of 2020</i>	<i>67 I.T. Act</i>	<i>Khatauli 26.05.2020</i>	<i>Muzaffar Nagar</i>	<i>Sristi</i>	<i>Jugnu Bhartiya</i>
<i>428 of 2020</i>	<i>506 and 67 I.T. Act</i>	<i>Daurala 20.09.2020</i>	<i>Meerut</i>	<i>Smt. Shiromani Monika</i>	<i>Punit</i>
<i>455 of 2020</i>	<i>323, 504, 506 IPC</i>	<i>Cantt 25.08.2021</i>	<i>Varanasi</i>	<i>Neeraj Kumar</i>	<i>Kamal, Arun, Kuldeep, One unknown</i>
<i>459 of 2020</i>	<i>147, 323, 504, 506, 392 IPC</i>	<i>Cantt. 26.08.2021</i>	<i>Varanasi</i>	<i>Kamal Verma</i>	<i>Neeraj, Manish, one unknown</i>
<i>44 of 2020</i>	<i>174.A IPC</i>	<i>Rohaniya</i>	<i>Varanasi</i>	<i>Inspector Crime Mohit Yadav</i>	<i>Chandan Kumar, Sandip Kumar Mishra</i>

8. Learned counsels have also filed the photocopies of the entire first information reports mentioned in the aforesaid chart.

9. Learned counsels have further stated that the victim herein was the National President of 'Janeu Kranti Abhiyan' and her husband/informant was the treasurer in it. The prime witness Ankit is also a member of the said organization. The applicants were also associated with the godman Chandra Mohan for about 10 years and used to live permanently with him since 2018. The applicant-Chandan Kumar had even married one Sanjana Sharma (who was also a member of the organization) at the instructions of Chandra Mohan. After a period of time, the applicant- Chandan Kumar came to know that he has been cheated by the said godman Chandra Mohan and

came to know of his illegal activities and as such, posted several messages in a WhatsApp group 'Har Har Mahadev' from 01.08.2019 to 03.08.2019, which was being administered by one Kamal. The said Kamal was also threatened by Chandra Mohan and his followers and he had also sent a letter to the S.S.P., Meerut on 26.08.2019, which is a matter of record. Infuriated, by the said posts on the said WhatsApp group, the present FIR has been instituted after cooking a false story.

10. Learned counsels have also indicated that there are several FIRs' instituted against Chandra Mohan including Case Crime No.317 of 2005, under Sections 302 and 307 I.P.C., P.S. Bhopa, District Muzaffarnagar and Case Crime No.131 of 2019, P.S. Rajpur, District Dehradun, Uttarakhand lodged by Smt. Neeraj.

11. Learned counsels have also stated that the posts on WhatsApp led immense protests against the godman Chandra Mohan and almost all his disciples were divided into two sections and a large section of his disciples rose against him. As a result of the said act, the said godman Chandra Mohan incurred a huge loss in the form of donations as his regular disciples discontinued their contributions leading to the stoppage of various campaigns and schemes. The new recruitment to the Ashram was also brought to a near halt. The present FIR has been foisted just three days after the said WhatsApp messages became viral.

12. It is also argued by the counsels for the applicants that another FIR No.352 of 2019 has also been foisted against the applicants for demanding ransom and also under I.T. Act. The same *modus operandi* has been followed in another FIR No.30 of 2020 filed at P.S. Hasanpur, District Amroha, U.P. against one Kovinder and others. Learned counsels have further stated that even the statement of the said eye-witness Ankit stands falsified on the ground that he could have certainly reported the matter as it had come to his knowledge five minutes after the said incident.

13. Learned counsels have further stated that in the present scenario everybody carries mobile and the victim could have narrated the story to her husband on mobile itself and she being an educated lady herself. She could have got the FIR lodged at the Varanasi itself through Ankit or herself, but lodging of the FIR, all the way at a far from place about 800 kilometers from Varanasi at Meerut speaks volume of the malicious intent of the informant to implicate the applicants at the behest of godman Chandra Mohan. Learned counsels have further stated that even their parokars have been threatened and beaten up by the followers of godman Chandra Mohan.

14. Learned counsels have further stated that seven witnesses have been examined at trial and there is no likelihood of any tampering of evidence by the applicants.

15. Learned counsels have further placed much reliance on the judgment of Apex Court passed in the case of **Union of India vs. K.A. Najeeb**<sup>1</sup>, wherein the Apex Court has observed as under:-

"We are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail."

16. There are two other cases foisted against the applicant-Chandan Kumar at Case Crime No.352 of 2019 at P.S. Daurala, District Meerut and Case Crime No.456 of 2019 at P.S. Nai Mandi, Muzaffarnagar. Learned counsels have further stated that the victim of the present case is an accused in Case Crime No.131 of 2019, in which initially a closure report was submitted, but the said closure report was rejected and further investigation was ordered by the learned court which is still pending. Learned counsels have further

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1 AIR 2021 SC 712

stated that during trial, the informant and the victim had even escaped to answer the questions put to them with respect to the registration of Case Crime No.131 of 2019 against them. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon at length. It is also argued that the criminal history assigned to the applicants stands explained. The applicants are in jail since 28.02.2020 and 01.03.2020 respectively. In case, the applicants are released on bail, they will not misuse the liberty of bail. There is no possibility of applicants tampering with evidence at this stage.

***For State:***

17. Per contra, learned A.G.A. and learned counsel for the informant have vehemently opposed the bail applications on the ground that the applicants have committed the gruesome act of gang-rape with the victim and it is not possible in the Indian society for a woman to foist false allegation of rape. Many such offences of sexual assault go unreported. Learned counsels have further stated that the prosecution witnesses of fact have been examined and they have deposed categorically against the applicants.

18. Learned counsels have further stated that the delay caused in lodging the FIR is but natural as the victim was under acute pressure due to the Indian values to not to reveal the said act committed with her. The victim has been ravished out of the lust by the applicants as she was found alone in her room. Learned counsels have further stated that it is an admitted fact that the victim, informant and the applicants were working in the same organization run in the name of 'Janeu Kranti Abhiyan'. Already seven witnesses have been examined and only the statement of doctor remains to be recorded. Learned counsels have further stated that the supplementary affidavit filed on behalf of the informant in Criminal Misc. Bail Application No.32824 of 2020

categorically indicates that the applicants are not co-operating with trial. Even the advocate of one of the applicants was removed and an amicus curiae was provided to him. The applicants have got the trial delayed on one pretext or the other.

19. Learned counsels have further stated that as per the provisions of Section 114-A of the Indian Evidence Act, the statement of the victim needs no corroboration and has to be relied. Learned counsels have further stated that false story of the involvement of godman Chandra Mohan has been foisted by the applicants just to get themselves exonerated with the grave offences committed by them. The offence of gang-rape is of grave nature and the bail applications are liable to be rejected. Although, they could not dispute the fact that there is delay in lodging the FIR.

#### **CONCLUSION:**

20. The Apex Court in the judgment of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat**<sup>2</sup>, has categorically opined that in the current non permissive Indian society, no girl would foist a false case of sexual assault against any person to avoid being maligned in society.

21. Much water has flown down the Ganges since passing of the aforesaid judgment by the Apex Court. The Indian society has undergone a complete change during the said period of about 40 years and now it is more often observed that false implication in sexual offences is on a rise. The inordinate delay in lodging the FIR is to be considered at the time of adjudicating the bail.

22. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration the inordinate delay in lodging of the FIR by the informant and also the fact that the trial is at its conclusive end, and without expressing any opinion on the merits of the case, the

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<sup>2</sup> (1983) 3 SCC 217



Court is of the view that the applicants have made out a case for bail. The bail applications are allowed.

23. Let the applicants- **Sandeep Kumar Mishra** and **Chandan Kumar** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

- (i) The applicants will not tamper with the evidence during the trial.
- (ii). The applicants will not pressurize/ intimidate the prosecution witness.
- (iii) The applicants will appear before the trial court on the date fixed, unless personal presence is exempted.
- (iv) The applicants shall not commit an offence similar to the offence of which he is accused, or suspected of the commission of which they are suspected.
- (v) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

24. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicants and sureties be verified by the court concerned before the bonds are accepted.

25. It is made clear that observations made in granting bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

**Order Date :- 16.02.2023**

Ravi Kant