

B.A.No. 2746
FIR No. 133/2021
PS Pahar Ganj
State v. Umar Siddiqui

28.06.2021
AT 4 pm
ORDER

This is an application u/s 439 Cr.P.C. for grant of regular bail on behalf of accused-applicant Umar Siddiqui in case FIR No. 133/2021.

Ld. counsel for the accused-applicant has contended that accused-applicant has been falsely implicated in the present case and is in JC since 04.06.2021, that the accused-applicant is a 21 years old young boy and the prosecutrix is 28 years old married lady with one minor child of 9 years and that the relationship was consensual and as per contents of the FIR itself, the first instance allegedly took place in the year 2019 whereas the FIR registered in the year 2021 after an unexplained delay of 23 months. That the first remand is over and the mobile of the accused-applicant is also seized and no such objectionable videos were ever circulated or are stored in the mobile phone of the accused-applicant. That the allegations are false on the face of it and that the complainant and the accused-applicant had together visited several places, even after 2019, and the photographs of the complainant and the prosecutrix enjoying a comfortable

relationship are also annexed with the application which clearly goes to show that the relationship was all along consensual between two adults. That complainant is working and educated lady and as per complainant herself, she had relationship with the applicant with her consent and willingness. That there is no false promise of marriage by the applicant as complainant is already married and has one child. That the allegations per se do not fall within the definition of rape under Section 376 IPC. Ld. counsel in support of his contentions has relied upon **G. Achyut Kumar v. State of Odisha**; **Jayanti Rani Panda v. State of West Bengal and Ors.** 1984 Cri. L. J. 1535; **Anurag Soni v. State of Chhattisgarh** 2019 (6) SCALE 211 and **Dilip Singh v. State of Bihar** (2005) 1 SCC 85; **Ganesh Bhavan Patel & Ors. v. State of Maharashtra** 1979 AIR 135; **Sanjay Chandra & Ors. v. CBI** 2011 (10) LRC 108 (SC); **Shri. P. Chidambaram v. Central Bureau of Investigation** Cri. Appeal No. 1603/2019 decided by Hon'ble Supreme Court on 22.10.2019;

Ld. Addl. PP submits that complainant is 28 years old and has minor daughter and as per allegations leveled, first incident is of 2019 and the FIR is registered on basis of the complaint made on 04.06.2021. That statement under Section 164 CrPC has also been recorded and the complainant has supported the allegations. That the mobile phone has been seized and is yet to be sent to FSL and no such objectionable material, however,

was found stored in the said mobile phone and that the prosecutrix was in relationship with the accused-applicant for the last almost 2 years and in the course of which they had visited several hotels and places on several occasions and investigation so far has been conducted in respect of the hotel Hirdaya and Sea Rock.

The complainant has also joined the proceedings and submitted that she is married but has estranged relations with her Husband, though due to her daughter she has not obtained divorce and that she was not interested in any kind of relationship with any person and that they were working in the same office and she entered into the relationship with the accused-applicant as he had promised that he shall marry her.

Heard.

As per the allegations raised in the FIR founded on the statement of the prosecutrix, in July 2019 she met the accused as they both were working together in the same mobile shop, and in July 2019 itself he had proposed to her to be his girlfriend, on 22.8.2019, he took her to OYO Hriday-inHotel and had forcefully established physical relations with her, he had made a video and taken her photographs also, and threatened her that he shall make these viral if she leaves him ever, and thereafter established physical relations with her, in different hotels, by threatening that he will upload her private videos and pictures on social media, and in January 2021, when she had refused to be with him any further

he created a public scene on the road used abusive language and is again blackmailing her.

The allegations in the FIR do not allude to any promise to marry, but are of forcible sexual intercourse by the accused. During the arguments it came to be projected that the accusations are of sexual intercourse on the pretext of marriage and the complainant also had made submissions along same lines, however, the contents of the FIR are completely in a different direction altogether.

It has been stated in the reply of the IO, that the prosecutrix has supported the allegations in her statement under section 164 Cr. PC. In view of the above, let the statement of the prosecutrix u/s 164 Cr. PC be placed on record.

For record and consideration put up on **30.6.2021**.

Copy of order be forwarded to Ld.Counsel for accused-applicant through electronic mode.



(Neelofer Abida Perveen)
SpecialJudge-02, NDPS/
ASJ, (Central), THC / Delhi
28.06.2021