

(2010) 02 AHC CK 0166

**Allahabad High Court (Lucknow Bench)****Case No:** Criminal Miscellaneous Case No. 1296 of 2010

Virendra Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Feb. 19, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 164
- Penal Code, 1860 (IPC) - Section 376, 452, 504, 506

**Hon'ble Judges:** Ashwani Kumar Singh, J**Final Decision:** Allowed

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**Judgement**

Ashwani Kumar Singh, J.

Heard learned Counsel for the applicant, the learned Additional Government Advocate, Sri Rahul Misra, learned Counsel for the complainant and perused the F.I.R., the medical report and other relevant papers on record.

2. Submission of the learned Counsel for the applicant is that in the present case no medical examination of the prosecutrix had taken place, as averred in para 11 of the application and the F.I.R. was lodged on an application moved under section 156(3) Cr.P.C. and the concerned Court directed for lodging of F.I.R. The Investigating Officer thereafter submitted final report on which protest application was entertained and the matter was further investigated.

3. The statement of the prosecutrix was recorded under section 164 Cr.P.C. where she alleged that the accusedapplicant committed rape on her. Learned Counsel further submits that the story set up by the prosecutrix in her statement under section 164 Cr.P.C. is not worthy of credence as it is revealed that she went along with the accused applicant on her own and later on the accusedapplicant committed rape on her. This story set up by the prosecutrix is not plausible and it seems that the matter is of consenting parties. The accusedapplicant is in jail since 12.1.2010 and has no previous criminal history, as averred in para 23 of the application.

4. Sri Rahul Misra, learned Counsel for the complainant has vehemently opposed the bail application.

5. Considering the facts and circumstance of the case, let the applicant be released on bail in case Crime No. 64/2007 under sections 376/452/504/506 I.P.C. P.S. Gosaiganj District Lucknow on his filing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned/remand Magistrate.