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**(2008) 09 AHC CK 0294**

**Allahabad High Court**

**Case No:** Criminal M.B.A. No's. 19688, 19689 and 21814 of 2008

Shalini Awasthi and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 10, 2008

**Acts Referred:**

- Copyright Act, 1957 - Section 51, 63, 68A
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Immoral Traffic (Prevention) Act, 1956 - Section 3, 5, 6
- Indecent Representation of Women (Prohibition) Act, 1986 - Section 3, 4, 6
- Penal Code, 1860 (IPC) - Section 294, 366A

**Citation:** (2008) 3 ACR 3302

**Hon'ble Judges:** Ravindra Singh, J

**Bench:** Single Bench

**Advocate:** Dilip Kumar, Ashok Tripathi and Manish Tiwari, for the Appellant; A.G.A., for the Respondent

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**Judgement**

Ravindra Singh, J.

The applicants Shalini Awasthi and Pragati Awasthi have filed the Criminal Misc. Bail Application No. 19689 of 2008, the applicant Vijaylaxmi Awasthi has filed the Criminal Misc. Bail Application No. 19688 of 2008 and the applicant Amarjeet has filed the Criminal Misc. Bail Application No. 21814 of 2008 with a prayer that they may be released on bail in Case Crime No. 886 of 2008 under Sections 294 and 366A, I.P.C. and Sections 3, 4 and 6 of the Indecent Representation of Woman (Prohibition) Act, 1986 and Section 3/5/6 of Immoral Traffic (Prevention) Act, 1956 and Sections 51, 63 and 68A of Copyright Act, P. S. Shahpur, District Gorakhpur.

2. The above mentioned bail applications are arising out of same offence, i.e., Case Crime No. 886 of 2008, therefore, the same are being disposed of by a common order.

3. The facts in brief of this case is that the F.I.R. of this case has been lodged by Sri Vishwajeet Srivastava, Circle Officer of Police on 23.5.2008 at 8.10 p.m. in respect of the incident which had occurred on 23.5.2008 at about 7.00 p.m. The distance of the police station Shahpur was about 4 k.m. from the alleged place of incident. The F.I.R. has been lodged against co-accused Gyan Prakash Srivastava, co-accused Irfan alias Pintu and co-accused Jyoti. It is alleged that the first informant got the information on 23.5.2008 that Blue Film of some girls and women are being prepared in residence No. 784A, Railway Colony, Baulia, on that information the first informant alongwith some other police personnel came at the place of occurrence at about 7.00 p.m. on 23.5.2008 from where two co-accused persons namely, Gyan Prakash Srivastava and co-accused Irfan alias Pintu who tried to escape from the place of occurrence from back door of the house were apprehended. On interrogation the co-accused Gyan Prakash Srivastava disclosed that the co-accused Irfan alias Pintu was driver who was bringing girls and women at his house by way of enticing them, one secret camera was installed by him in a room, the same was connected with a T.V. which was kept in an another room, they were provided tea or cold drinks having some intoxicant, under their intoxication they were being made naked and they were sexually intercoursed. Their indecent blue films were prepared and they were compelled to remain in his net, they were called again for doing the sexual intercourse. He disclosed the name of applicant Pragati Awasthi, applicant Salini Awasthi, applicant Vijaylaxmi Awasthi and co-accused Shilpi Jaiswal whose blue films were prepared and were oftenly called for doing sexual intercourse. The first informant saw the complete system inside the house and recovered the close circuit camera and recovered all articles including close circuit camera, coloured T.V., cassettes of handicam, blue film C.D. Cassetts and V.C.D. etc. When co-accused Gyan Prakash Srivastava was asked about handicam camera by which blue films were prepared he stated that same was stolen on 12.5.2008. The co-accused Irfan alias Pintu stated that the co-accused Gyan Prakash Srivastava was not paying the appropriate amount, he was his driver, he had stolen the handicam photo camera on 12.5.2008 from the house of co-accused Gyan Prakash Srivastava. During investigation the I.O. collected the evidence against the applicants and other co-accused persons showing their involvement. At initial stage the statement of applicants Shalini Awasthi, Pragati Awasthi, Vijailaxmi Awasthi were recorded u/s 161, Cr. P.C. as witnesses but subsequently they have been made the accused. According to their statement the applicant Amarjeet Singh has also been made the accused. The applicants applied for bail before learned Session Judge, Gorakhpur who rejected the same on 4.7.2008 by a common order. Being aggrieved from the order dated 4.7.2008 the applicants have moved the present bail applications.

4. Heard Sri Dilip Kumar and Ashok Tripathi, learned Counsel for the applicants Shalini Awasthi, Pragati Awasthi and Smt. Vijailaxmi Awasthi, and Sri Manish Tiwary, learned Counsel for the applicant Amarjeet and learned A.G.A. for the State of U.P.

5. It is contended by learned Counsel for the applicant that in the present case the applicants have not been arrested on spot showing their involvement in commission of any offence of Indecent Representation of Woman (Prohibition) Act, Immoral Traffic (Prevention) Act or Copy Right Act and nothing incriminating has been recovered from the possession of the applicants to show the involvement of the applicants in commission of the alleged offence. Even according to the prosecution version the co-accused Gyan Prakash Srivastava was using his house for such purpose and he is the main person who was alluring the girls and women by playing fraud by way of providing intoxicant to them. He was preparing blue films of girls and women thereafter he was black-mailing them and compelling them to involve in illegal sexual activities.

6. It is further contended that Shalini Awasthi, Pragati Awasthi and Vijaylaxmi Awasthi are the victims of the said incident, they may be good witnesses to prove the case against co-accused Gyan Prakash Srivastava and others. It is also surprising that the applicants Shalini Awasthi and Pragati Awasthi are the real sisters and the applicant Vijaylaxmi Awasthi is mother, they may not be actively involved in commission of the alleged offence with their free will and consent but they have been cheated by co-accused Gyan Prakash Srivastava and others. They have been made the victim of the alleged incident by way of providing some intoxicant, under intoxication their clothes were removed from their body and sexual intercourse was done with them, it's blue films were also prepared, on the basis of these blue films they were blackmailed by co-accused Gyan Prakash Srivastava and his associates. At the most it can be said that they were used by co-accused Gyan Prakash Srivastava on the basis of their blue films. There is no credible evidence against the applicants to show that they have committed the alleged offence even according to the prosecution version their own statement was recorded u/s 161 Cr. P.C., and the statement of the other co-accused are against them, it may not be read as a credible evidence.

7. It is contended on behalf of applicant Amarjeet that he is not named in the F.I.R. He is a business-man, he is having a shop of dry-cleaning/laundry at Golghar, Gorakhpur, he is a reputed business-man, he has been falsely implicated in the present case only on the basis of the statements of co-accused. The applicants are innocent persons they have been falsely implicated in the present case due to ill-will of the first informant. The applicants are not involved in any criminal case, therefore, they may be released on bail.

8. In reply of the above contention, it is submitted by learned A.G.A. according to the statement of applicant Km. Shalini Awasthi she was student of IXth class. First of all she was taken to the house of the co-accused Gyan Prakash Srivastava by co-accused Km. Jyoti where some intoxication was provided in cold drink, under her intoxication she was made naked and sexual intercourse was done with her when she became unconscious, she was given Rs. 1,000 thereafter she was called by the

co-accused Gyan Prakash Srivastava for doing sexual intercourse for which she was paid further Rs. 1,000 or Rs. 500. She stated that she was sexually assaulted by the applicant Amarjeet also and she was paid Rs. 1,000, she was supplied some other place also where sexual intercourse was done. She clearly stated that for the allurements and her satisfaction she was attending the calls of co-accused Gyan Prakash Srivastava and doing sexual intercourse, the same statement was given by the applicant Pragati Awasthi and Smt. Vijaylaxmi Awasthi. The applicant Pragati Awasthi was also a student of Class IX, the applicant Shalini Awasthi, Pragati Awasthi and Vijaylaxmi Awasthi were working in the racket of Gyan Prakash Srivastava, some independent witnesses of the locality have also been interrogated by the I.O. who have supported the prosecution story and trying call details also connecting the applicant in commission of the alleged offence. The independent witness namely Sanjay Gupta, Ajay Verma have been interrogated, they have supported the prosecution story. The applicants and other co-accused persons are involved in an offence which is serious in nature affecting the whole society, in such circumstances the applicants may not be released on bail.

9. Considering the facts and circumstances of the case and submission made by learned Counsel for the applicants and learned A.G.A. and considering the nature of allegations which shows that the applicants are involved in a sex racket adversely affecting the society, it is a social offence affecting the society at large, its gravity is too much and without expressing any opinion on the merits of the case, the applicants are not entitled to be released on bail. The prayer for bail is refused.

Accordingly, all the above mentioned bail applications are rejected.