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A.F.R.

Reserved on 16.11.2019

Delivered on 03.02.2020

Court No. - 67

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44814 of 2019

Applicant :- Swami Chinmayanand Alias Krishna Pal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajrshi Gupta, Manish Singh, Raj Kumar Singh Chauhan, Shri Dileep Kumar Senior Adv.

Counsel for Opposite Party :- G.A., Swetashwa Agarwal

Hon'ble Rahul Chaturvedi,J.

[1] Battery of lawyers headed by Sri Dileep Kumar, learned Senior Advocate assisted by Sri Rajrshi Gupta, Manish Singh, Raj Kumar Singh Chauhan for the applicant, Sri Ravi Kiran Jain, learned Senior Advocate assisted by Sri Swetashwa Agarwal, learned counsel for the complainant, Sri SK Pal, learned G.A., Sri Ghanshyam Kumar, learned AGA assisted by Sri Mohd. Afzal, brief holder were heard at length.

[2] The pleadings between the parties have been exchanged and matter is ripe for final arguments.

[3] The instant is a much discussed case in the social media/news papers which has created upheaval and turmoil in the society whereby the accused applicant Chinmayanand, Ex-Member of Parliament who once also adorned the post of

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Minister for internal affairs in the Government of India is suffering incarceration in jail since 20th August, 2019 in connection with Case Crime No. 0445 of 2019, P.S. Kotwali, District Shahjahanpur. The FIR of the case was initially registered by Harish Chandra Sharma, father of the alleged victim, Miss "A", on 27.08.2019 under sections 364 and 506 IPC at P.S. Kowali, District Shahjahanpur naming the applicant Swami Chanmayanand, Rector of SS Law College, Shahjahanpur as well as certain other persons. Eventually, an Special Investigating Team, constituted on the directions of the Hon'ble Apex Court, when the Hon'ble Apex Court has taken a *suo moto* cognizance Writ (Crl) No. 2 of 2019, entitling **"In Re-MISSING OF AN LL.M. STUDENT AT SWAMI SUKHDEVANAND LAW COLLEGE (SS LAW COLLEGE), FROM SHAHJAHANPUR, U.P.,** vide its direction dated 02.09.2019. The aforesaid team, after collecting the evidence during investigation, submitted its report under section 173 (2) of the Code of Criminal Procedure (in short "Cr.P.C.") under sections 376-C, 354-D, 342 and 506 IPC against the sole named accused- Swami Chinmayanand alias Krishna Pal Singh and learned Magistrate took cognizance for the aforesaid offence against the accused.

[4] In the FIR, lodged by Harish Chandra Sharma, father of the alleged victim, the complainant has admitted that his daughter was pursuing her LL.M. Education from SS Law College, Shahjahanpur and she was residing in the hostel of the aforesaid College. He alleged therein that since 23.08.2019, the

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mobile telephone of the victim was switched off and through the facebook account of (Miss "A"-daughter of Harish Chand) saw certain videos and pictures uploaded by the daughter. For the first time, came to know that her daughter and some other girls were being subjected to sexual misadventures by the accused applicant and they are being extended threats for their lives by his hired goons. He further raised his eyebrows alleging therein that his daughter is being duped in hot water by the miscreants, including the named applicant. In advancement of the allegation, the complainant mentioned that the whereabouts of his daughter is not known and in distress. When he in-vainly tried to contact the accused-Chinmayanand alias Krishna Pal Singh on phone, yielded no result, her room in the hostel of the alleged victim was found locked. It was highlighted in the aforesaid FIR that the accused-applicant is a man of status, high stature and being political giant, he along with his accomplice is quite capable to spindle with the evidence and room of the victim was desired to be sealed by the authorities in front of responsible media personals.

[5] Beyond the aforesaid FIR, it is quite evident that only relying upon the evidence of the facebook account and uploaded videos, father of the alleged victim has galvanized and prompted the present FIR. It appears from the text of the FIR, lodged by father that there was no direct contact between the daughter and her father. The relationship between father and the daughter seems to be quite strange as they were having no direct contacts and were alien to each other and the father was

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taking stock of the situation of his daughter through her facebook account.

[6] During the pendency of the present bail application one more development came into fora, when the copy of another FIR was demonstrated before this Court, which was lodged on 25.08.2019 for the incident occurred on 22.08.2019 at P.S. Shahjahanpur, District Shahjanapur lodged by one Om Singh, Advocate, the legal supervisor of the Mumukshu Ashram, Shahjahanpur (said to be owned by the accused applicant-Swami Chinmayanand alias Krishna Pal Singh). In fact, a case was lodged by Om Singh on 25.08.2019 for the incident of 22.08.2019 bearing CC No. 442 of 2019 under sections 387, 507 IPC and 67 of the Information Technology (Amendment) Act 2008 against unknown holder of mobile No. 8604207465 with the allegation on the holder of above mobile, that the applicant (herein accused) received a call on his mobile no. 9415326300 from the aforesaid phone (No. 8604207465) demanding ransom of Rs. Five Crore and threatening him of defamation in the society by making certain nude videos and pictures of the accused, viral in the social network, if the aforesaid ransom demand remains unfulfilled. The gist and substance of CC No. 442 of 2019, lodged on 25.08.2019 derives that it was got registered as a contrivance only to malign the stature and status to the extent of assassination of the applicant's character.

Fortifying the aforesaid narratives of the allegations, it is contended that soon thereafter sensing some rat in the dirty

ragged story, father of Miss "A"- Harish Chanda lodged CC No. 445 of 2019 on 27.08.2019 in a foxy manner and design, two days after the aforesaid FIR, enrolling applicant as accused and slapping all sort of malicious allegations upon him to reduce his high reputation into ashes. To build up mountain of his argument, learned counsel for the applicant submitted that the complainant of the aforesaid FIR, even has dived his daughter Miss "A" to win the dirty game for the sake of monetary and material gains.

[7] After lodging FIR No. 0442 of 2019 against the holder of mobile phone number 8604207465, the police investigated the matter by hotly pursued accused, who were at run, who demanded the ransom amount from the applicant. This fact was also much tossed in the print and in the electronic media and the Hon'ble Apex Court took *suo-moto* cognizance of both the matters in Writ (Criminal) No. 2 of 2019 re: **Missing of an LL.M student at Swami Shukhdevana Law College (SS Law College) from Shahjahanpur** under section PIL-W on the new papers report as well as on online new portals stating therein that an LL.M student Miss "A" of the aforesaid College is missing from 24.08.2019, wherein the missing girl levelled certain allegations on the persons running the institutions in SS Law College. When the the matter was taken up for consideration by Hon'ble the Apex Court on 30.08.2019, learned counsel appearing for the petitioners informed the Court that the missing girl has been located in Rajasthan and she was enroute to Shahjahanpur. It was directed by the Court that the

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missing girl shall be produced within two and half hours before the Court. Thereafter on the same day at about 7.30 P.M. on 30.08.2019 the missing girl "A" appeared before the Court. She stated before the Court on camera, that prior to Raksha Bandhan, she left Shahjahanpur along with her three collegemates, who were also her "family friends". She made certain grievances against the institution as well as the management of the College, made certain apprehensions and refused to return to her home State without meeting and conversing with her parents at Delhi. Subsequently on the suggestions of the Amicus Curiae, the registry of the Court was directed to ensure the stay Miss "A" in All India Woman's Conference "Bapnu Ghar" at Bhagwan Das Marg, New Delhi for four days the alleged victim girl was also permitted to talk to her parents on landline phone installed therein. Furthermore, relying upon the aforesaid statement of Miss "A" the Commissioner of Police, Delhi was directed to constitute a police team for escorting the parents of Miss "A" from Shahjahanpur to New Delhi to meet her. On 2nd September 2019 the case was again taken up by the Hon'ble Apex Court.

[8] Sri Dileep Kumar, learned Senior Advocate appearing for the applicant pointed out that in the aforesaid statement the alleged victim girl before Hon'ble Apex Court did not even whisper of any sexual assault upon her by the applicant or any other person at Shahjahanpur, though she raised certain grievances against the institution as well as the management. It is contended by learned Senior Advocate Sri Dilip Kumar that

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the victim is a major girl, student of LL.M. had got fullest opportunity to share all her so-called atrocities faced by her during almost one year by the accused applicant, at least to her blood relations (parent) but astoundingly, kept mum and not only this Miss "A" also maintained her aberrant silence before the highest Court of the country. A girl, whose virginity is at stake, not uttering a single word to her own parent or before the Court regarding the alleged incident, is an astonishing conduct which speak volumes about the ingeniousness of the prosecution story.

[9] Both the cases i.e. Case Crime No. 0445 of 2019 under sections 364 and 506 IPC and CIR No. 0442 of 2016 under sections 387, 507 and 67 of the Information and Technology Act were entrusted to the Special Investigation Team for investigation, lead by Shri Navin Arora (IGP, Public Grievance Cell).

[10] Learned counsel for the applicant has drawn attention of the Court to the letter written by Miss "A" dated 05.09.2019 addressed to the Incharge Inspector, Lodhi Colony, South Delhi vide DD No. 42 -A wherein for the first time, after her missing report, she narrated the entire saga of outrageous criminality committed upon her since October 2018 to July 2019. The aforesaid letter is self revealing wherein she has given vivid description, giving every minutest detail of alleged atrocities and sexual advances/excesses faced by her by none other but the applicant -Swami Chinmayanand. The period of aforesaid

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misdeeds has been mentioned to be from October 2018 to July 2019 during which she accused the applicant to forcibly make his body massaged and perforce used to establish corporeal relationship with her. Thereafter her statement under section 161 Cr.P.C. was recorded and her *Majid* statement was recorded on 13.09.2019 wherein she stated that she was subjected to consistent rape during aforesaid period by the accused applicant- Chinmayanand. In the month of October 2018 during her stay in the Hostel, she was taken by the goons of the accused forcibly and forced to massage and establish sexual relationship with him. During this period, she purchased an online spy camera (spectacle fit-in with hidden camera), with which she used to record the entire distasteful episodes. Her statement recorded under section 164 Cr.P.C. on 16.09.2019, also contains almost same flavour and texture with certain modifications hither and thither. After receiving directions from the Hon'ble Apex Court, the Special Investigating Team was constituted and on 04.11.2019. The SIT, lead by Sri Navin Arora, after holding thread bear investigation and probed both the cases i.e., Case Crime Nos. 442 of 2019 and 445 of 2019 were entrusted to SIT. After having in-depth probe, the SIT submitted charge sheet and thereafter the concerned Magistrate took cognizance in both the offences against respective accused persons on different dates. The SIT after thrashing voluminous evidence in the twin cases, summarized their story, salient features unearthed therein are enumerated herein below :

Miss "A" was a regular student B.A., LL.B., in the

aforesaid College and after completing the degree course, she was keen to pursue future Master's course of study by getting herself admitted in LL.M. Since her merit was too low in the admission test/graduation (LL.B.) course, she developed contacts with the applicant- Chinmayanand, who is the Rector of the aforesaid College. The applicant, using his good authority and offices, got Miss "A" admitted in the aforesaid Law College and not only this he purchased and gifted a Scooty and made its payment, through one Vivek Gupta, not only this her boarding was also arranged in the OBC hostel of the College, mother of Miss "A" was given employment in a school run by the Ashram. All these benevolence showered upon Miss "A" brought her closer to the accused applicant. Miss "A" initially was forced to go to Ashram thereafter she used to visit the Ashram of the accused as a frequent visitor, where she used to stay at with the applicant, serve the accused-applicant and not only this, she offered opportunity of sexual advancement and affinity. In the span of time Miss "A" purchased the special spectacles, referred to above, and recorded certain nude photographs/video clips while massaging the applicant. In order to black mail the accused applicant, Miss "A" in connivance with her accomplices namely, Sanjay, Sachin, Vikram and few others in the garb of the aforesaid photographs/video clips planned to demand ransom from the applicant threatening him to make those nude pictures/video of the accused-applicant viral on the social media otherwise pay ransom of Rs. Five Crores. All the accused persons on a rented car motored to Ghaziabad, Delhi, Shimla,

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Rajasthan and other places. Meanwhile, co-accused Sanjay somehow managed to install whatsapp application on his mobile using SIM, issued from the ID and OTP of mobile number no. 8604207465, which belonged to another person. Thereafter, using the aforesaid number, he took screenshots of the selected obscene video clips, prepared by Miss "A" and sent to accused applicant- Chinmayanand's number 9415326300, demanding ransom of Rs. Five Crores. In furtherance of the execution of the aforesaid plan, to hingle the accused applicant -Chinmayanand, on 09.08.2019 co-accused Sachin went to Chinmayanand's Mumukshu Ashram for bargaining the ransom amount in liu of the aforesaid obscene photographs/video clips and kneel him down before them.

[11] To rebut the aforesaid allegations levelled against Miss "A" and her accomplices, father of Miss "A" Case Crime No. 445 of 2019, under sections 364/506 IPC was lodged at P.S. Kotwali, District Shahjahanpur against the applicant- Chinmayanad and other unknown persons of the Mumukshu Ashram.

[12] Perusal of the record establishes that the applicant misused his position of stature in getting Miss "A" admitted in the LL.M. (P.G.) course. Not only this, on behalf of Miss "A" he deposited the requisite fee of her class, provided her accommodation in the hostel and part time job to her in the e-Library, the employment of the mother of Miss "A" in the Institution run by Ashram. The relationship between both the

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parties got deepened when Miss "A" started serving the applicant at his personal level and became a frequent visitor of applicant's Ashram.

[13] What is mind boggling, disturbing and matter of concern is that a student of LL.M., i.e. Miss "A" comes into contact with the applicant, seeks and enjoys his 'patronage' and 'benevolence' as well as on her family members and in lieu of that she was said to be exploited physically by the applicant, keeps mum throughout the entire long period for almost 9-10 months. She never shared anything with anyone including her parents. On the other hand, during those dark period, on her own, purchased an spy-camera fitted goggles, from which she shot nude pictures and recorded videos of the accused, which were used by her in demanding the ransom money from the accused applicant, after blackmailing her. During the entire period of the alleged atrocities committed by the applicant, she was sharing private moments with the applicant, got her family member employed in the College and other material benefits from the applicant. There is nothing on record to show that she ever objected to or raised any protest or divulged anything adverse before the claimed incident. Therefore, it is difficult to decipher as to who has used whom ? It seems to be a matter of *quid pro quo*.

[14] The applicant, who is aged about more than 72 years, suffering from number of ailments, who was Member of Parliament and has once adorned the post of State Minister for

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internal affairs in the Government of India has got himself involved in a most discreet incident and that too for a considerable period of time, as per the report of 173 (2) Cr.P.C. of the police.

[15] It is derived from the record that for the first time her woos on 05.09.2019 busted out after coming in contact with her parents at Delhi, prior to this date there is not any whisper by her that the accused applicant has exploited her. She never shared the alleged nightmare faced by her during last 9-10 months with her parents or any near and dear ones.

[16] Sri Ravi K. Jain, Senior Advocate assisted by Sri Swetashwa Agarwal refuted the submissions advanced by learned counsel for the applicant tooth and nail. It is submitted by Sri Jain, that a person who adorn the position of Union Minister and now Rector of group of educational institution, stoop down to this level is deplorable. He at this elderly age acted in such a shabby manner and behavior, exploited a young girl to quench his sexual lust by using his musclemen to lift her (victim) from hostel, developed affinity with her and then compelled her to massage him and then ravished her. Rebutting her question marked conduct and behavior for 9-10 months raised by the learned counsel for the applicant, it was argued that the victim was being mercilessly exploited by the applicant for 9-10 months and during the entire weeping dark period, she was at receiving end, therefore, to win over the devastating situation, she mustered the courage, stood straight and decided

to take revenge by exposing the demonized character and behavior of the accused- Chinmayanand.

Adding spirit to his aforesaid argument Sri Jain relied upon the celebrated judgement of Hon'ble Apex Court passed in the case of **State of U.P. Through CBI v. Amarmani Tripathi [(2005) 8 SCC 21]** whereby Hon'ble the Apex Court has enumerated the factors, while considering and deciding the bail application, extract of which are reproduced herein below:

"15. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati vs. NCT, Delhi 2001 (4) SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179). .."

It is contended by Shri Jain, learned Senior Advocate that accused-applicant is an ex-union minister, a political giant belonging to ruling party? He is involved in the greivous offence of sexual exploitation of young girl "Miss A". Besides this, keeping in view his position standing in the society, if released on bail, it is highly likely that trial would not see its final day.

[17] Before adjudicating the bail application, the Court is

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conscious about the "word of caution" provided by Hon'ble the Apex Court in its recent judgment in the case of **Shri P. Chidambaram v. Central Bureau of Investigation in Criminal Appeal No. 1603 of 2019 [arising out of SLP (Crl) No. 9269 of 2019] along with Criminal Appeal No. 1605 of 2019 [arising out of SLP (Crl) No. 9445 of 2019]** decided by the Hon'ble Apex Court, wherein Hon'ble the Supreme Court had deprecated the practice of giving any finding on the merits, while deciding the Bail Application. Paragraph 18 of the judgement in the aforesaid case is relevant in the matter, which has been enumerated herein below:

"18. In the present case, in the impugned judgment, paras (51) to (70) relate to the findings on the merits of the prosecution case. As discussed earlier, at the stage of considering the application for bail, detailed examination of the merits of the prosecution case and the merits or demerits of the materials relied upon by the prosecution, should be avoided. It is therefore, made clear that the findings of the High Court in paras (51) to (70) be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial or other proceedings."

(underlined by the Court).

[18] On the aforesaid premises, this Court is also shunning to express its opinion on the merits of the case but the fact remains that both the referred cases has been investigated by the police thoroughly and has submitted its report under section 173 (2) Cr.P.C., charge sheet has also been

filed and the learned Magistrate concerned has taken cognizance of the offences in both the cases. Besides this, the Bail Application of Miss "A" was allowed by coordinate Bench of this Court while deciding Criminal Misc. Bail Application No. 43814 of 2019 on 04.12.2019 and all the accomplices of her on different occasions, who are accused of Case Crime No. 442 of 2019.

[19] In the present scenario where this Court finds that it might be a case of *quid pro quo*, the intriguing question arises whether the applicant be granted bail or not ? In this regard, let us examine the Bail in criminal jurisprudence by examining the celebrated judgements of Hon'ble Apex Court. In the circumstances, principles of law down in the case of **Nikesh Tarachand Shah v. Union of India and another passed in Writ Petition (Criminal) No. 67 of 2017** by the Hon'ble Apex Court is flambeaus, which categorically establishes the concept of validity and lucidity for adjudication of bail to any person. For ready reference, paragraph 13 of the aforesaid judgement, is required to be enumerated below, which runs as under :

"13. What is important to learn from this history is that clause 39 of Magna Carta was subsequently extended to pre-trial imprisonment, so that persons could be enlarged on bail to secure their attendance for the ensuing trial. It may only be added that one century after the Bill of Rights, the US Constitution borrowed the language of the Bill of Rights when the principle of habeas corpus

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found its way into [Article 1](#) Section 9 of the US Constitution, followed by the Eighth Amendment to the Constitution which expressly states that, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[20] Therefore, perusal of the aforesaid principles of law enunciated in the case of **Nikesh Tarachand Shah (Supra)** categorically establishes that seeking bail is the fundamental right of any person under law, which cannot be suspended. It is the sacrosanct duty of any court to protect life and personal liberty of any person except according to fair, just and reasonable procedure established by valid law and here the law laid down under Article 21 of the Constitution of India, which deals with lives and personal liberty of any citizen, can in no way be ignored or jeopardized in any manner.

[21] Now coming nearer home, it is pertinent to mention the observation made by Hon'ble Krishna Iyer, J., in the case of **Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh [1978 AIR 429, 1978 SCR (2) 371]** wherein the Court observed that the issue of bail is one of the liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.

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[22] Similarly in the case of **Gucharan Singh v. State (Delhi Administration)[(1978) 1 SCC 118 : 1978 SCC (Cri) 41]** it was observed as below :

"There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

[23] Apart of all the aforesaid citations, referred to above, this Court, while adjudicating the instant bail matter, is more focussing on the principles laid down by Hon'ble the Apex Court in the case of Shri P.Chidambaram (Supra) wherein the Court has described well settled principles with regard to the facts and circumstances of each case and the factors, which are to be essentially considered while adjudicating bail application of any applicant. For ready reference, relevant paragraphs 22 and 23 of the aforesaid judgment are enumerated herein below :

"22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and

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standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide [Prahlad Singh Bhati v. NCT, Delhi and another](#) (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner."

[24] The aforesaid essential ingredients with regards to the facts and circumstances as well as the factors, emanating therein, are the *alma mater* for consideration of any bail application lying before this Court.

[25] Though, learned counsel for the informant has tried to establish that there was a conspiracy hatched by the applicant against Miss "A" and the conspiracy has given birth to the FIR mentioning therein the ransom and blackmailing of the accused by Miss "A" and her accomplices, therefore, the application for bail of the accused application is liable to be rejected.

[26] Sri Dilip Gupta, learned Senior Advocate for the applicant has tried to fortify his argument by drawing attention of the Court towards the case of **Dataram Singh v. State of U.P. and another reported in reported in AIR 2018 SC 980**, specially paragraph 17, extract of which is referred to herein below :

"17. In our opinion, it is not necessary to go

into the correctness or otherwise of the allegations made against the appellant. This is a matter that will, of course, be dealt with by the trial judge. However, what is important, as far as we are concerned, is that during the entire period of investigations which appear to have been spread over seven months, the appellant was not arrested by the investigating officer. Even when the appellant apprehended that he might be arrested after the charge sheet was filed against him, he was not arrested for a considerable period of time. When he approached the Allahabad High Court for quashing the FIR lodged against him, he was granted two months time to appear before the trial judge. All these facts are an indication that there was no apprehension that the appellant would abscond or would hamper the trial in any manner. That being the case, the trial judge, as well as the High Court ought to have judiciously exercised discretion and granted bail to the appellant. It is nobody's case that the appellant is a shady character and there is nothing on record to indicate that the appellant had earlier been involved in any unacceptable activity, let alone any alleged illegal activity."

[27] Hon'ble the Apex Court after thrashing the case of Nikesh Tarachand Shah (Supra) going back to the decision of Magna Carta. In that decision, reference was made to **Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565**) wherein it is observed that it was held way back in **Nagendra v. King-Emperor (AIR 1924 Cal 476)** that bail is not to be withheld as a punishment. Reference was also made to **Emperor v. Hutchinson (AIR 1931 All 356)** wherein it

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was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

[28] However, it does not mean that bail should be granted in every case liberally rather while adjudicating any bail application, the Court must consider authentic evidence collected during investigation, available on record with humanity and compassion and if it thinks that there are possibilities of granting bail to an accused, the conditions thereof should not be so strict that it turns to be incapable to be complied with and thus making the bail order illusory.

[29] Thus taking into stock of all the facts and circumstances of the case, submissions of the learned counsel for the rival parties, discussions referred to herein above, especially the principles of law and the essential factors to be focused upon while adjudicating any bail application by Hon'ble Apex Court in the latest case of **Shri P. Chidambaram v. CBI (Supra)**, this Court is drawing its conclusion in the instant case.

[30] No doubt, the accusations leveled against the accused- Chinmayanad (who is supposed to have deep influence in the society as well in the administration because of his atomizing stature), are severe and there are reasonable apprehensions of his tampering with the evidence, which endangers the security of the presence of the rival party/s

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during the trial, as well as the circumstances, which are peculiar to the octogenarian accused, who is suffering from number of old age ailments, as canvassed by the learned Senior Advocate of the applicant, has further agitated that the medical evidence of Miss "A" is also unable to sufficiently indicate that she was subject to sexual exploitation for a long time. Besides this, the police after holding an indepth probe into the matter has submitted in charge sheet under sections 376 C, 354 D, 342 and 506 IPC. The maximum punishment is under section 376 C IPC, not less than five years but extend to ten years because legislation in its own wisdom has excluded this offence from the realm of 'Rape'. In this connection, it is worthwhile to point out here that the learned Magistrate has already taken cognizance of the offences and blurred chances of any tempering of evidence at this stage. It is also canvassed that accused of Case Crime No. 445 of 2019, Miss "A" was already admitted on bail in extortion matter by a coordinate Bench of this Court that there is no justifiable reason to deny the bail to the present applicant-Chinmayanad. As pointed out earlier, that both the parties crossed their limits and at this stage it is very difficult to adjudicate as to who exploited whom?? In fact, both of them used each other.

[31] To the contrary it is also noteworthy there are material on record where the family members of Miss "A" were being benefited out of the solipsistic behavior of the accused applicant. It is also noticeable that there is also nothing on record that during the period of the alleged atrocities

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committed upon Miss "A" she made any complaint or even any whisper to her family members against the accused applicant, therefore, at this juncture, this Court draws its conclusion that it was a complete matter of *quid pro quo* but over a span of time the greed for extracting "more", she along with her accomplices seems to have advanced for hatching a conspiracy against the applicant and tried to black mail him for ransom, through the obscene video clips recorded by herself.

[32] It is apprehended by the complainant that the accused applicant -Swami Chinmayanad alias Krishna Pal Singh is an affluent giant robust personality of Shahjahanpur, therefore, he may infringe law of the land in any manner, he has the capacity to influence/tamper the evidence and thus fair trial in his home town i.e. Shahjahanpur may be affected. The apprehension raised by the complainant is not unfounded and this Court acknowledging the same is duty bound to give sun on the path of justice to the court below in accordance with law.

[33] This Court is conscious of the fact that many times, the learned trial courts sway away be the observations of the Apex Court while adjudicating the bail orders. It is, therefore, earnestly directed that no observation of this Court in passing this order shall effect either ways by the trial court during trial. The trial court would apply its own judicial discretion and accused while adjudicating the trial of the instant case.

[34] In view of the above, let the applicant-Swami

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Chinmayanand alias Krishna Pal Singh, be released on bail on his executing a personal bond and furnishing two **heavy** sureties each in the like amount to the satisfaction of the court concerned in case crime no. 0445 of 2019, under Sections 376-C, 354-D, 342 and 506 IPC, P.S. Kotwali, District Shahjahanpur with the following conditions:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH THEIR COUNSEL. IN CASE OF THEIR ABSENCE , WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSE THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS PRESENCE

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PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANTS ARE DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST HIM IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANTS.

[35] However, it is made clear that any violation of above conditions by the applicant, shall have serious repercussion on

[25]

his/her bail so granted by this court and the trial court is at a liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

[36] After release of the applicant by the court of Shahjahanpur it is further directed that trial of both the aforementioned criminal cases i.e., CC No. 442 of 2019 and 445 of 2019 be transmitted to the court of corresponding jurisdiction at Lucknow from the court of the court of Shahjahanpur thereafter the court concerned at Lucknow is directed to take both the cases on priority basis, if possible on day to day basis, and adjudicate them pursuant to the aforesaid conditions, referred to above.

[37] The Senior Superintendent of Police, Lucknow is directed to ensure the security and safety of Miss "A", her family members and witnesses during the entire trial period by deputing an officer to the rank of Senior Sub Inspector and armed constables.

[38] With the aforesaid directions, the bail application stands allowed with the aforesaid riders.

Order Date : February 3, 2020

Sumit S