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THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.39388/2021
Ramhet vs. State of M.P. & Another

Gwalior, Dated : 10-08-2021

Shri D.S. Tomar along-with Shri S.K. Mishra, Counsel for the applicant.

Shri Ravi Ballabh Triapthi, Counsel for the State.

Case diary is available.

This first application under Section 439 of Cr.P.C. has been filed for grant of bail.

The applicant has been arrested on 08.07.2021 in connection with Crime No.341/2021 registered at Police Station Pichhore Distt. Shivpuri for offence under Sections 376-D, 366 & 506 of IPC.

It is submitted by the Counsel for the applicant, that the engagement of the prosecutrix and the co-accused Deepak had taken place and it appears that because of that engagement, the co-accused Deepak and prosecutrix indulged in consensual sex. There is no allegation of rape against the applicant. The only allegation against the applicant is that he along-with co-accused took the prosecutrix to a hut situated in *Bharatpur Ki Dang* and at the time when co-accused was committing rape on the prosecutrix, applicant was standing outside the hut.

When Counsel for the applicant was directed to point out any document to show that the engagement of the prosecutrix with co-

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accused had taken place, then a stand was changed by Counsel for the applicant and submitted that in fact talks of marriage of prosecutrix with co-accused Deepak were going on.

When this Court asked Counsel for the applicant as to whether there is any document to show that the talks of marriage of the prosecutrix with the co-accused Deepak were going on or not, then it was submitted by Shri D.S. Tomar that he has already received vakalatnama of prosecutrix and affidavit would be filed.

It is really shocking that Counsel for the applicant is holding the vakalatnama of the prosecutrix. Recently, the similar situation had arisen in case of **Javed Ansari Vs. State of U.P. (Criminal Misc. Bail Application No.27194/2021)** before the High Court of Allahabad and following order was passed :

“1-Today, when the case is taken up, Mr. Ram Ker Singh, learned counsel, (Enrollment No. UP 4309 of 1980, Advocate Roll No. A/R0784/2012, Chamber No. 9, Tribhuvan Upadhyay Hall IInd Floor, High Court Allahabad, Mobile Nos. 9451302056 and 9807344717), has appeared in this case on behalf of the applicant, whereas Mr. Hausila Prasad, learned Advocate, (Enrollment No. UP 3754/1994, Advocate Roll No. A/H 0127/2012, Mobile No. 9450704504, Chamber No. 9, Tribhuvan Upadhyay Hall IInd Floor, High Court, Allahabad, resident of 475 Rajapur, near police booth, Prayagraj, 211001) has appeared on behalf of opposite party No. 2/informant, Gurdeep Verma, who is father of the victim/prosecutrix aged about 15 years.

2-Learned counsel for the applicant after advancing his argument at some length, stated that Mr. Hausila Prasad,

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learned counsel for the informant/complainant also has no objection in granting bail to the applicant. On being enquired by this Court, Mr. Hausila Prasad, learned Advocate did not oppose the submissions of learned Counsel for the applicant. In the meantime, Mr. Vivek Kumar Singh, learned Advocate (Enrollment No. A/V-0571/2012, U.P.B.C. No. 2590 of 1998, Mobile No. 9412207892) appeared in this case and by raising a preliminary objection, apprised the Court that in fact only he has the instructions on behalf of informant, Gurdeep Verma S/o Heman Verma, resident of Mohalla Sarai Gosain, police station Kotwali City, district Bulandshahr and not Mr. Hausala Prasad, Advocate, who has filed forged Vakalatnama on behalf of the informant. He also pointed out that Mr. Hausila Prasad, Advocate has filed his Vakalatnama on 26th of July, 2021 through E-mode in collusion with Mr. Ram Ker Singh, learned counsel for the applicant only to obtain bail by hook or crook and in fact the said Vakalatnama is a forged document, whereas the fact is that the informant/complainant, Gurdeep Verma has not engaged him.

3-When Mr. Hausila Prasad was confronted with the submissions of Mr. Vivek Kumar Singh, Advocate that he has instructions on behalf of the informant/complainant, Mr. Hausila Prasad, learned Advocate stated at the bar that the said Vakalatnama has been provided to him by Mr. Ram Ker Singh, learned counsel for the applicant. It is also submitted by Mr. Hausila Prasad that he is associated with Mr. Ram Ker Singh, learned counsel appearing for the applicant. It is further submitted that his fee to appear in this case on behalf of the informant has also been given by Mr. Ram Ker Singh, learned counsel for the applicant. He was engaged by Mr. Ram Ker Singh, for the reason that the Hon'ble Court may not issue the notices to the informant/complainant, Gurdeep Verma and victim of this case, because the present matter pertains to offence under Section 376(2)(i), 506 IPC and 3/4 Protection of Children from Sexual Offences Act, registered as Case Crime No. 434 of 2021 at police station Kotwali Nagar, district Bulandshahr and grant bail to the applicant.

4-From the aforesaid statements made by Mr. Hausila Prasad, learned Advocate at the bar, who has appeared in this case on behalf of informant/complainant, it is

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ostensibly clear that forged Vakalatnama has been filed on behalf of informant/complainant to surreptitiously obtain bail. Hard copy of the aforesaid "Vakalatnama" in question is made part of the record.

5-At this stage, Mr. Hausila Prasad learned counsel has tendered his unconditional apology by stating that in future he will take care of such things and will not repeat such mistake in future and also stated that he wants to withdraw his aforesaid Vakalatnama, whereas Mr. Ram Ker Singh, learned counsel did not tender his apology and stated at the bar that it is not a new thing but it is a common practice in the High Court. This statement of Mr. Ram Ker Singh advocate is very shocking and painful to the conscious which creates a stir compelling one to ponder over the matter. The conduct of Mr. Ram Ker Singh and Mr. Hausila Prasad, Advocates who are having a long standing experience of more than 40 years and 26 years of the practice respectively, is highly deplorable. This Court denounces/condemns the conduct of both the Advocates as they made effort to tarnish the image of noble profession of advocacy.

6-It is very painful to see the downfall in moral values of noble legal profession. In the legal field, professional ethics are a fundamental requirement, because it is an important tool that establishes rule of law and keeps the legal profession and the legal institutions on a high pedestal. In the legal profession, in order to maintain the sanctity of faith between the Bar and the Bench, ethics are important factor, which contains the elements of discipline, fairness, trust, moral values, help to colleagues, respect and responsibilities, etc. It creates confidence between the Bar and the Bench. Lawyers play a crucial role in justice delivery system and in my view, professional ethics are the back bone of legal profession, which is self regulating profession and it is moral duty of the Bar and the Bench both to maintain the sanctity of legal profession and the institution.

7-Vakalatnama is a valuable document in legal profession, which empowers a lawyer to act for or on behalf of his client. Sometimes it confers wide authority/power upon a lawyer, therefore in the opinion of this Court, "Vakalatnama" must be beyond the shadow of any doubt.

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8-Since, Mr. Hausila Prasad learned advocate realizing his mistake has accepted his guilt before the Court, therefore, this Court is not taking any action against him and on his request, he is permitted to move an appropriate application to withdraw his Vakalatnama from this case, whereas Mr. Ram Ker Singh, learned counsel for the applicant, who had provided forged Vakalatnama of the informant and had also given fee to Mr. Hausila Prasad, as per disclosure made by him, neither tendered an oral apology nor did he feel regret on his conduct. Under the facts and circumstances of the case, this Court can not act as a silent spectator and has no option left, except to refer the issue of filing the forged Vakalatnama of the informant as mentioned above to the Bar Council of Uttar Pradesh for taking appropriate action/decision in the matter.

9-The issue of filing a forged Vakalatnama of any person in a Court proceeding is not a small one but it is serious issue, because it may adversely affect the valuable legal right and interest of the persons/litigants concerned, ergo keeping in view, the larger interest of the litigants/victims, complainants or aggrieved persons specially in criminal matters and members of the bar, who believe in professional ethics, this Court feels that now it is high time to adopt some remedial measures, so the litigants or aggrieved persons are not deprived of their legal rights. This Court proposes that along with Vakalatnama, self attested copy of any identity proof (preferably Aadhar Card) mentioning mobile number of the person concerned should also be filed or any other method may be adopted in the interest of litigants and the institution.

10-In view of above, the following directions are issued:-

(i)-Let a copy of this order be placed before the Registrar General of this Court within a week, who shall forward the certified copy of this order to the Chairman, Bar Council of Uttar Pradesh within two weeks thereafter for taking appropriate action/decision in the matter in accordance with law.

(ii)-The copy of this order be circulated to all the Hon'ble sitting judges of this Court as well to the president, Allahabad High Court Bar Association and Advocates' association.

(iii)-The aforesaid proposal as mentioned in

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paragraph no. 9 of this order, be placed by the Registrar General before Hon'ble the Acting Chief Justice for necessary directions in the matter.

(iv)-A notice be issued to the informant/opposite party No. 2, Gurdeep Verma through Chief Judicial Magistrate concerned, who will ensure service of notice upon the informant/opposite party No. 2 and submit report by the next date fixed in the matter.

11-Let this case be listed on 7th of September, 2021 before the appropriate Bench.”

Thus, it is clear that the applicant is actively involved in winning over the witnesses right from very beginning and in that process had also succeeded in getting a vakalatnama of the prosecutrix which has been provided by him to his counsel. Unfortunately, the Counsel for the applicant also collected the vakalatnama so that a Lawyer on behalf of the prosecutrix can be engaged. **This practice cannot be appreciated.**

The accused cannot be permitted to engage Lawyer on behalf of the prosecutrix so that an affidavit of his own choice can be filed.....

At this stage, it is submitted by Counsel for the applicant that he may be permitted to withdraw the bail application.

Considering the totality of facts and circumstances of the case coupled with the fact that Counsel for applicant is also holding vakalatnama on behalf of prosecutrix and an attempt would have been made to engage another Lawyer by filing no objection affidavit

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of the prosecutrix, it is clear that applicant is involved in winning over the prosecution witnesses, and his Lawyer also fell to his trap.

Accordingly, no case is made out even to accept the prayer for withdrawal.

Application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Aman