

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. No.3002/2021

**Judgment reserved on :23.11.2021**

**Date of decision : 08.04.2022**

ROHAN CHATURVEDI @ ROHAN CHOBHEY ..... Petitioner

Through: Mr.Ramesh Gupta, Sr.  
Advocate with Mr. Shailendra  
Singh and Mr.IshaanJain,  
Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Aashaa Tiwari, APP for  
State with Inspector Vandana PS  
Geeta Colony.  
Mr.Anil Kumar Sharma, Adv  
for prosecutrix with prosecutrix  
in person.

**CORAM:**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**JUDGMENT**

**ANU MALHOTRA, J.**

1. The applicant vide the present application seeks the grant of bail in terms of Section 439 of the Cr.P.C., 1973, in relation to FIR No. 598/2020 Police Station Geeta Colony registered under Sections 354C/354D/384/509/506/376 of the Indian Penal Code, 1860 read with Section 67 of the IT Act submitting to the effect that he is incarcerated since 10.12.2020 and that he has been falsely implicated in the instant case. It was submitted on behalf of the applicant that the relations, if any, between the applicant and the complainant were

wholly consensual as is also brought forth through the photographs of the applicant and the complainant that have been placed on record.

2. It has been submitted on behalf of the applicant that he was arrested on his wedding day and remanded to police custody on 10.12.2020 and subsequently placed in judicial custody on 12.12.2020; that an application had been filed by the applicant bearing Bail Appln. No. 4245/2020 seeking grant of bail which was dismissed as withdrawn on 12.1.2021 and that thereafter a supplementary charge sheet was filed by the Investigating Officer dated 7.7.2021.

3. It is further submitted that the allegations of the complainant are totally false and vague and not corroborated by the investigation conducted. It is submitted on behalf of the applicant that even as per the report received from the Cyber Cell revealed that an ID Nalayak\_111 had been created from the mobile No. 9899013048 owned and registered in the name of the complainant. The applicant has further submitted that the complainant has created fake IDs with a purpose to create false evidence against the petitioner.

4. The status report submitted by the State for the date 10.9.2021 stated to the effect that the FIR was registered on the statement of the victim 'D' d/o 'PB' resident of 105, Rani Garden, Geeta Colony who had alleged that in 2019 she along with her friend Kapil went to the Silver Key Executive Stay, 29520 hotel in Noida, UP, where she met the applicant who thereafter started blackmailing her that he had a CCTV footage of the check-in and check-out of the hotel and a video recording. The complainant alleged that the applicant had sent her nude picture and obscene messages through

whatsapp, instagram, facebook messenger and text messages and also extorted a huge amount from her and also threatened her.

5. It was stated further through the status report that in her statement under Section 164 of the Cr.P.C., 1973, recorded on 7.12.2020, the complainant had alleged that one day, she had gone to the applicant's hotel Collection 'OYO' where the applicant took her into a room on the terrace and locked her, dragged her neck and banged her head at the wall and put his hands/fist into her private part and on the basis of her statement under Section 164 of the Cr.P.C., 1973, Section 376 of the Indian Penal Code, 1860 was also added and the medical examination of the complainant was also conducted on 8.12.2020 at the SDN Hospital and her counselling was also done wherein she corroborated the allegations made against the petitioner/applicant.

6. The applicant is stated to have also been detained on 10.12.2020 from the Ramada Hotel, Mussorie, and brought to the Police Station Geeta Colony and after a detailed interrogation he was arrested at 16:50 hours on 10.12.2020 by following all guidelines as laid down by the Hon'ble Supreme Court in *D.K.Basu V. State of Bengal*, AIR (1997) SC 610, and thereafter two days' custody remand of the applicant had been granted to recover his mobile phone and the laptop with which the applicant used to send messages for blackmailing the complainant and to recover the extorted amount but the applicant did not co-operate in the investigation.

7. As per the status report a notice was served to the Manager of the Silver Key Executive Hotel, Noida to provide the CCTV footage

and related documents and at the stage of submission of that status report the reply from the hotel management was awaited. It was stated through the status report further that according to the complainant the applicant had sent obscene messages and videos to her and her family members and the investigating Agency had sent the screen shots of the messages and videos seized from the complainant to the Cyber Cell for technical assistance and the Cyber Cell had required the URL of the data for authentication and the complainant had provided the URL number and thus Section 67 of the IT Act, 2000 was also added with the charge sheet having been filed on 4.2.2021.

8. In view of the averments that have been made in the status report submitted for the date 10.9.2021, vide order dated 10.9.2021 a specific chart showing the mobile numbers utilized with the details of utilization of the same, specifically the name of the user of the mobile, the location from which they were utilized, the messages sent and the screen shots sent through the said mobile were directed to be placed on the record by the State along with the specification of also as to vide which mobile there were photographs mentioned at page 6 of the status report that had been sent. The State was also directed to submit a clarification in relation to all details mentioned qua the Cyber Cell Report dated 5.3.2020, 21.10.2020 and the messages sent through Instagram and as to whom they were sent by and by what mobilenumbers also with the specification in relation to Instagram IDs. i.e. dollar\_ dikh, stud and nalayak\_III and as to the utilization of the same were also directed to be specified through the chart. Details of the contents of the pen drive provided by Pallav Chaturvedi were

also directed to be specified by the State. Furthermore, the State was also directed to specify the utilization of the mails i.e.shivroh03@gmail.com and rohankumar69@gmail.com sent to the Cyber Cell and the person who has sent the said mails. The State was also directed to specify on verification the details in relation to the eight numbers provided by the prosecutrix on 15.07.2021 as stated in the status report.

9. Pursuant to the proceedings dated 21.9.2021, the State submitted the status report dated 17.9.2021. As per the said status report, it was stated to the effect:

- *Mobile no 9899013048 is registered in the name of the Complainant "D.B" D/O P.B*
- *Mobile no 9411941006 is registered in the name of accused Rohan Chaubey .*
- *The instagram ID nalayak\_111 is registered withmobile no 9899013048 of the complainant . Otherinstagram accounts dollar\_dikh , stud , rupalidixit\_ncr aresame as nalayak\_111 with user name changed”*

10. The chart submitted by the State with submissions made thereon reads to the effect:

S. No.	Name of Account	Created with registered mobile No.	Time period of Log in	Findings
1	Nalayak_111 created on 22.10.2020 at 02:21:47 UTC	9899013048A ctivated on22.01.2020 inname ofComplainan t D.B d/o P.B	9.11.2020 to 14.11.2020	When this account was created location of mobile no 9899013048 was khurejikas, Rani Garden,Shahdara.  When this account was

				<p>created location of mobile no 9411941006 was Noida Sec 75 U.P.</p> <p>time period (9.11.2020 to 14.11.2020) when the said Instagram account was logged in location of mobile no 9899013048 is Preet Vihar, Karkardooma, Khurejikas Rani Garden, Geeta Colony, Shastri Nagar Delhi. The IMEI No is 3542101005603940. Name of Device is Nokia TA1201.</p> <p>At this time the location of mobile no 9411941006 is different places in Etawah U.P. The IMEI No is 866320042948440. The name of device was Xiaomi M1906F9SI.</p>
2	<ul style="list-style-type: none"> <li>Regarding other Instagram IDs it was brought on record that dollar_dikh, stud and nalayak_111 are same. Instagram profiles as screenshot of dollar_dikh &amp; stud were seen. During interrogation complainant stated that rupalidixit_ncr, dollar_dikh, stud and nalayak_111 have common user ID with changed names.</li> <li>As per the Cyber Cell Report rupalidixit_ncr dt. 5.12.20 and _deleted_bhiebaeaeiaehc... on dated 21.10.2020 was not found on Instagram on respective dates.</li> </ul>			
	<ul style="list-style-type: none"> <li>Screenshot of Instagram, Cyber cell report, Instagram business record, and mobile no 9899013048 owner details have been attached as <b>Annexure (A)</b></li> </ul>			

**The complainant had also produced hardcopies of certain mails allegedly sent from Gmail IDs**

S No	Name of G Mail account	Registered Mobile no/alternate Mail	Google account ID/Name	Date of creation	Location of mobile when

					<b>created</b>
1	Shivroh03@gmail.com	9899013048 Activated on 22,01,2020 in name of Compalaint D.B d/o P.B	496183973818 Name Shiv Kumar	21.2.2 020 at 7:12:4 8 UTC	Locatin of mobile no 9899013 048 was 12/203, Geeta Colony, Delhi During that time location of mobile no 9411941 006 was Sec-75 Noida U.P.
2	Rohankumar69@gmail.com	Rohan1248 @ yahoo.com	933092912868 Rohan Kumar	19.02. 2009 at 12:16: 01 UTC	No phone no. was provided

**The Gmail ID rohanchaubey9@gmail.com and Facebook of accused Rohan Chaubey was opened at Cyber Cell / SHDDistrict. And following documents were found. Attached as annexure "C"**

Sl. No.	Name of document	Details of the documents
1	Photographs	" Google Photos" app with relevant dates. These photographs were late given to police in Pen Drive by Pallave Chaturvedi.
2	Whatsapp chat backup	This was found in mail dt 30.10.2019
3	A mail dt.19.12.2019	Send from deepanshi09babbargmail.com torohanchaubey9@gmail.com with subject "Sorry Rohan".
4	1 page booking confirmation mail IRCTC	This was dt 11 Dec 2021 . with name of passenger -complainant "D.B".
5.	1 page mail dt. Sept 23, 2019	This was an order confirmation mail received from info@bonorganik.com garment for RS 1999/-Shipping address and billing address – Complainant"D.B" C322 geetaapartment, Geeta Colony.
6	Facebook Messenger chat	This was found in facebook of the accused.

**The details of the Gmail ID [rohanchaubey9@gmail.com](mailto:rohanchaubey9@gmail.com) from where above mentioned documents were found is as following attached as annexure "D"**

Name of Gmail account	Registered Mobile no/Alternate Mail	Google account ID/Name	Date of creation
rohanchaubey9@gmail.com	9411941006 (accused mobile no)	708749901423 , Name Rohan	11.7.2011 at

	pallav2007@gmail.com	Chaubey	19:00:45 UTC
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11. As per the status report submitted by the State on 15.7.2021 the complainant had appeared at the Police Station Geeta Colony and stated that she was getting vulgar messages from thousands of unknown numbers and that this was being done by the family of the accused/applicant as she has got him arrested and she provided a list of seven numbers which is to the effect:

<i>Sr.No.</i>	<i>Mobile No.</i>	<i>Details</i>	<i>Location</i>
1.	+12893355934	Belongs to Arabia	Not Known
2.	+94762099274	Belongs to Srilanka	Not Known
3.	+6369275758	Belongs to Phillipines	Not Known
4.	+6383912651	Belongs to Phillipines	Not Known
5.	9770792593	Number running	Chattisgarh, India
6.	+917978078560	Number running	Mayurbhang, India
7.	+919781902335	Not running	Amritsar

12. Inter alia, the State submitted that there was no previous involvement against the applicant.

13. As per the averments made in the FIR which was registered initially on 4.12.2020 under Sections 354C/354D/384/509/506/376 of the Indian Penal Code, 1860, in May, 2019, the complainant had gone to a hotel in Noida with her friend Kapil and the applicant suddenly met her at the hotel in a relationship with Kapil and after seeing the complainant with her friend, the applicant started messaging the complainant on her mobile number 9910624749 and started calling on the phone and told her that he liked the complainant very much and loved her and asked her to leave Kapil and start living with him as he

wanted to marry her. As per the FIR, on the complainant's refusal the applicant took her personal mobile number from the hotel booking records and took a photograph of her Aadhar Card in his phone and sent it to her phone number which she had given at the hotel booking and started blackmailing her and demanded money from her. It is further stated through the FIR that the applicant used to threaten the complainant that if she did not give him money he would send the hotel booking CCTV footages to her house and due to fear a sum of Rs.90,000/- was given by one Suman Chawla who lived in the Shiva Apartments who knew the complainant and this amount was given to the applicant and thereafter the complainant turned off her phone and switched it on after 10 hours whereafter the applicant started calling her again but the complainant did not pick up his calls.

14. It is further stated through the FIR that the applicant messaged the complainant and told her that he was sitting in his car under her house and he started pressurizing the complainant to get married and to live with him. The complainant further submitted through the FIR that she used to work in Genpact, Sector 185 for some days but due to the fear of the applicant she did not go to her work and in June, 2019 when she left her home to go for her work, the applicant snatched her mobilephone in the street behind her house and also misbehaved with her due to which she could not reach the office but lateron she had to resign from the job. It is stated through the FIR that after 3 to 4 hours of her phone having been snatched, the applicant made a lot of calls on the phone of her mother and sister of the complainant and told the complainant to stop living with Kapil or else he would ruin her and

that he had taken all the personal photos and bank details, Paytm, netbanking, and told that if she would not listen to him he would send her photographs and videos to her acquaintances and relatives. The applicant was also stated to have saved the password of the netbanking of the complainant. As per the FIR, it is alleged by the complainant that on the same day the applicant withdrew about Rs.20,000/- from her Paytm and when she told the complainant that she would tell all this to her parents and would make a police complaint, the applicant responded that he had a six hours hotel room recording of Kapil and the complainant and that he sent some photographs and videos to the complainant and told her that when she had gone to the hotel he had a camera installed in her room from which he had made videos and photographs and on seeing the same the complainant got very upset and went into depression. It was further stated therein that the applicant gave the videos to the family members of the complainant and also edited her personal photographs and started making calls to the number of the father of the complainant and told him that if his daughter did not listen to him he would make her photos and videos viral. The complainant through the FIR alleged that the applicant had been harassing her a lot and had started demanding money and had taken out all the money from the account on the basis of details.

15. Inter alia, as per the FIR, the complainant changed her number and started using another number i.e. **9540254040** but the details of that number also reached to the applicant. The complainant through the FIR further submitted that on the night of 1.7.2019, the applicant edited her photographs under the applicant's house and started

throwing papers by writing obscene messages after which he left and on the next day the applicant messaged the complainant so that some money was given to him or else he would make the photographs and videos viral and when the complainant could not give the money to the applicant he put his boys working near him behind her who followed her continuously. The complainant has further alleged that the applicant broke her phone and sent it back beneath her house and that the applicant got angry and had been sending porn messages to her friends and relatives and had started sending personal photographs of the complainant to them.

16. The complainant has alleged further through the FIR that on 26.11.2019 during Diwali the applicant sent a boy working with him named Dev beneath the house of the complainant and asked her to pay Rs.1,00,000/- and informed her that if the money was not given he would kill the complainant and her family members and when the complainant refused to give the money that boy left but the complainant went out of her father's factory and stated that he was standing outside her father's factory and if her father would come out he would throw acid and also threatened to kidnap the younger sister of the complainant from her college. The complainant has further stated through the FIR that the applicant would stand outside the office of Kapil and send a video from there and threatened her that if she did not listen to him, i.e., the applicant, he would kill Kapil in as much as he had a reach everywhere and he could do anything.

17. Through the FIR it is alleged that the applicant called the complainant to his hotel location OYO Sector 44, in December 2019

and told her that he would give all his photographs to her but when she reached there the applicant snatched her bag. The complainant stated through the FIR that her passport and all her identity proofs and some money were in her bag which the applicant took away whilst he was in his Nano. The complainant has further stated through the FIR that the applicant misbehaved with her and touched her at many places and the applicant was abusing the complainant in anger and was saying that he would take loans from banks on the basis of her document and would ruin her and would not leave her to show her face, and that he made all his employees run away from there. The complainant has further stated that the applicant kept her in a room all night and in the morning somehow the complainant reached her home after the incident and switched off her phone and due to her phone being switched off she was not in any contact though there were continuous phone calls from her mother. The complainant has further alleged through the FIR that the applicant after making fake IDs also used to harass her, send messages to her and also threatened her that he would take her documents from her bank. Inter alia, as per the FIR, the complainant stated that she was receiving phone calls from various numbers at her house and alleged that all these calls were made by the applicant.

18. Through her statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix, as already adverted to herein above, *inter alia* she reiterated the averments made in the FIR that the applicant had made her life hell having taken several pictures of hers and that he had forwarded all her pictures and videos to her future in-laws and he was

threatening to send all her pictures and videos to her other family members. As per the averments in the statement under Section 164 of the Cr.P.C., 1973 already been adverted to hereinabove, the complainant stated that she was admitted to Shanti Mukund hospital for a period of 4 to 5 days when the applicant had molested her and she was bleeding badly from her anus and had gone into depression.

19. In the FIR, the complainant had sought that her personal data and her IDs which were with the applicant be got returned to her and she and her family members and Kapil be provided protection.

20. Through the charge sheet submitted, the copy of which is annexed as Annexure P-3 to the application under consideration, it is stated that on 18.12.2020, the complainant reached the Police Station and handed over a mobile phone make MI black colour with a broken screen and informed that this was the mobile phone which the applicant had snatched from her in June, 2019 from the lane behind her house from her hand and deleted all her data and had broken the same and the same was seized by the Investigating Officer and sealed and deposited in the Maalkhana and was also sent vide a Road Certificate to the FSL, Rohini, Delhi for analysis. Through investigation it was also found that as per the charge sheet that OYO Silver Key Executive Stay had an agreement which showed that in June 2019, the agreement was in the name of Rohan Rao Chaturvedi @ Rohan Chaubey apparently the name of the applicant, and as the complainant has alleged that the applicant was sending her messages and photographs on facebook and Instagram, Section 67 of the IT Act, 2000 was invoked and the reports from the cyber cell were awaited.

21. Through the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix recorded on 7.12.2020, it was stated by the complainant as under:

*“I was in batch of 2013-16 of IMS Noida, doing BBA. A boy Rohan Chaubey used to like me but I was in relationship with one Kapil Yadav since very long. In June 2019 Rohan texted me on Facebook messenger & said you and Kapil incited OYO hotel & inquired about the details. Rohan met us on the same property. One day thereafter he told us to check in to the room at 1<sup>st</sup> floor. So we checked-in in that room. Rohan called me at the extension phone in that room asking if we need something. Rohan came to our room. Since me & my boyfriend Kapil knew each other so we started talking. After two-three days of this incident, Rohan sent some videos on my facebook messenger having video clips of our checking-in, checking out, washroom clips (taking bath) of me & Kapil. The videos of me & Kapil making out was also sent to me. My adhar card was there at the hotel, so Rohan took details from there & reached my house along with 2 of his friends. Rohan called at my number repeatedly 200 times. I received his call. He said if I don't come downstairs to meet him, he will leak all these videos and send to other persons. I got so scared. Rohan asked for Rs.50,000/- threaten me to leak to videos. I was working at Genpact. I had the money. I gave 50,000/- cash to Rohan. Another day, Rohan sent me 5-6 hours video clipping showing the entire day's activities (me & Kapil) at the above said hotel room. He called me up at my phone & asked me to meet him at Noida, Sec.44 at his hotel/office.*

*So, I went there. He molested me there. I went to meet him alone. Rohan took out all my belongings, Aadhaar Card, PAN Card, my photos, 1 gold chain & 1 mobile phone from my purse. He gave me a glass of water. The moment I had it, I became unconscious. Rohan transferred all the data of my phone including my photos, contacts & everything else to his phone. He also trapped my location in his phone. I stopped using that phone. So, he couldn't find my locations thereafter. He used to threat me about my sister saying that I will make her another 'Nirbhaya'. Rohan had threatened me so much that I had go into depression. Rohan had bite me all over my body on the day I went to his hotel/office. I had bite marks all over. I was bleeding. I was unconscious & he along with the help of his associates dragged me his car & drove me on the roads of Noida for 4 hours. I cannot recall what he did with me in the car. I still have cigarette burn marks on my thighs. 5-6 days thereafter, he started calling me again & tagged the 5-6 hours video of me & Kapil in the hotel room at my father's facebook account. Rohan sent the screenshot to me & I immediately de-activated my father's and other family's facebook account. I went downstairs, he used to be there in front of my house every time.*

*Earlier, me and my mother were scared about complaining about him. One day, Rohan snatched my mobile & took it away. One day, he sent one of his helps to my house who shouted like anything in front of my house. That servant called up Rohan's number & kept on speaker. I could see that Rohan*

*was standing in front of Kapil's office having pistol in his hands. Rohan threatened me on video call to call me at his hotel/office. I was scared & I went to his hotel/office. That servant dragged me from the stairs. When I reached the hotel/office, Rohan took me to a room at the terrace & locked it. He dragged my neck and banged my head at the wall. He put his hands/fist inside my vagina. I had wounds in my vagina. Rohan consumed cocaine in front of me. He slapped me & again left the room. Then, the room was unlocked by some other person after some time.*

*I took a auto from there. I reached home. Again at 7.30 a.m., Rohan again came to my house & he asked for Rs.90,000/- & threatened to make my videos viral. I gave him 90,000 through Suman Chawla when I called up to give money to Rohan. Rohan's manager Dev Prakash came to my house around Diwali to take Rs.2,50,000/- for Rohan. Rohan has made my life hell. Rohan has taken several pictures of me & him. He has forwarded all the pictures/videos to my future-in-laws. He is threatening to sent all the videos & pictures to other family members. I was admitted to Shanti Mukund Hospital also for 4-5 days when Rohan molested me. My anus was bleeding badly. I went into depression. There are several people behind him for money.*

*He threatened me that nobody can do any harm to him.”*

22. A supplementary charge sheet is indicated to have been submitted by the Investigating Agency dated 7.7.2021 wherein it was stated that the investigation regarding the Instagram IDs and Gmail was conducted and that the complainant produced certain documents alleging that the accused, i.e., the applicant herein, had sent her vulgar photos and threatening/abusive messages through whatsapp chats, Instagram and gmail and the Cyber Cell, District Shahdara was requested to assist with technical assistance for Instagram IDs \_deleted\_bhiebeaecaiehc,..rupalidixit\_ncr, dollar\_dikh, stud and nalayak\_111, was called for and the report regarding the said Instagram IDs was obtained and placed on record, as per which it is stated through the supplementary charge sheet that the cyber cell report rupalidixit\_ncr dated 5.12.2020 and \_deleted\_bhiebeaecaiehc.. on dated 21.10.2020 was not found on instagram on the respective dates.

23. As per the reply submitted by the State dated 8.11.2021 during the course of investigation the complainant was interrogated as to how many mobile numbers of the applicant she had and she stated that she had two numbers one was **9411941006** and the other she did not remember and stated that the applicant used to send her messages from two numbers **9411941006 and 9711308006** and an interrogation report was prepared. The State submitted that the details of the mobile No. **9411941006** were already on record and the mobile number **9711308006** was found to be not running.

24. Inter alia it has been submitted by the State that the complainant had given a list of persons including her parents alleging that the

applicant had sent nude/vulgar photographs on their mobile numbers but when these persons were contacted on the phone numbers provided by the complainant, they denied to having received nude/vulgar photographs in relation to which three audios were recorded and those audios only mentioned that they have received the messages from a company that the complainant is a fraud and that she has not paid the loan. Inter alia, it has been submitted in this reply under signatures of the SHO Police Station Geeta Colony that when other persons were contacted they even refused to talk to the Investigating Officer saying that they did not know anything and the victim herself called the Investigating Officer and asked as to why the Investigating Officer was contacting them and that she also sent a screenshot of her chat with one of the persons and asked the Investigating Officer not to disturb him and that she herself would bring people whom she wanted to be interrogated and nobody would give their mobile phone to the police.

25. It is stated further through the status report that various DD entries were made and one Vinod Yadav shared a message with the Investigating Officer which he received regarding the victim which was qua non-payment of loan by the victim 'D'. As per this reply of the State, the parents of the victim never received any call and the victim was repeatedly asked to bring her parents so that their statements could be recorded but she did not cooperate in investigation and on visiting her home she used to say that her mother was ill and could not give a statement then. It is stated through this reply of the State that two notices were served on the complainant directing her to

give the address details of the person she wanted to get interrogated and a notice was also served to the complainant to provide the account details of the bank so that the statements of the relevant time period could be brought on record to seek what amount of money was withdrawn by the accused but that the victim did not provide the account details of the banks and stated that the accused had taken money from her Paytm wallet of mobile numbers, **9540254040 and 9910624749** and a notice was sent to the Paytm through the Cyber Cell Unit and as per the reply no transaction was done in respect of the mobile numbers **9540254040 and 9910624749**.

26. *Inter alia* through this reply of the State dated 8.11.2021 it was submitted that the victim 'D' had mentioned that she was admitted to Shanti Mukund Hospital after the sexual assault on her by the applicant resulting into anal bleeding, the discharge summary was got verified and it was found that she was admitted to hospital on 7.10.2019 with a complaint of loose motions from 15 to 20 times per day mixed with blood since 7 days and she was discharged on 9.10.2019 and was diagnosed with Bacillary Dysentery .

27. Vide order dated 5.10.2021, it was considered appropriate in the interest of justice that the prosecutrix filed the response to the Bail Application in as much as she sought to corroborate the submissions that have been made through the FIR.

28. The response filed by the complainant with an affidavit dated 18.11.2021 of the complainant states to the effect that the applicant had three mobile phones **9711308006, 0411941006, 9711367006** and further contended that the applicant is an expert in hacking others

phones and misusing them and thus when the applicant snatched the phone of the victim he accessed the entire password of her mails, IDs bank accounts and tactfully misused the same by creating false evidence in his favour and even by the whatsapp on his mobile phone by running the whatsapp on his mobile phone from the mobile number of the complainant and tactfully obtained the password from her phone and not only sexually and mentally harassed and tortured her but also extorted the amount by sending the obscene photographs and videos circulated to the parents and other relatives and friends and thereby made the lives of the complainant and her family member hell and she remained in depression and lastly got the FIR lodged. It has been submitted through this reply of the prosecutrix that she had herself handed over the mobile phone to the Investigating Officer and that the applicant has so far not handed over the mobile phones, laptop and tablet and had not cooperated in the investigation to get the same recovered and that the investigation remains silent in relation to the mobile phone and laptop of the applicant, as a consequence of which she had to move an application under Section 173(8) of the Cr.P.C., 1973 to the Court for directions of investigation.

29. The prosecutrix further stated through her response that despite she having cited the name of her father and other relatives to whom the obscene photographs and messages had been sent on their social media platform like whatsapp, facebook, the Investigating Officer did not record their statements under Section 161 of the Cr.P.C., 1973 nor did he serve any notices under Section 41 of the Cr.P.C., 1973, nor did he bother to seize the obscene material from the respective

persons' mobile phones of their social media platform. The prosecutrix further submitted that the Investigating Officer had made no efforts to seize the CCTV footage of the hotel where the incident happened qua which the claim of the prosecution is that the CCTV footage of more than 30 days was not maintained at the Silver Key Executive Stay, Sector XI, Noida as per the information received.

30. The prosecutrix has further stated through her response that the Investigating Officer had not recorded the statement of the Manager/Incharge of the hotel on the day of the incident to link the commission of offence with the applicant qua which the response of the State as per the reply is to the effect that the owner of the property i.e., Silverkey Executive Stay, Sector XI Noida denied having any register and an enquiry was made from the list of employees provided by the hotel but no clue was found as no particular date of check in and check out was provided by the complainant and the register was also not traceable.

31. The complainant has further submitted that the Investigating Officer has not collected/seized the CDRs of the mobile phone of the applicant so far and has not seized the documents of the victim which were taken away by the applicant for taking loans from various banks/financial institutions by misusing the same in the name of the victim and that the Investigating Officer had not conducted the proper investigation. The complainant has further stated through her response that the victim was admitted to the Shanti Mukund Hospital after the sexual assault done by the applicant which resulted into anal bleeding continuously, that she was not able to eat or drink anything,

and for two days, she did not tell this to anyone and when she was not able to control the pain by just eating painkillers, she shared the same with her mother who got her admitted in the hospital and on being hospitalized ,treatment was given and she further stated that the sexual assault was done by the applicant by inserting his hand into her private parts and on account of maintenance of dignity and reputation she was not able to share this with the doctor as her parents and her uncle (Chacha) were in the hospital all the time and after being discharged from the hospital she shared the incident with her mother but she was scared of her other family members and she fell into depression due to the continuous terror and fear of the applicant who used to send people at her house to ask for money and threatened her mother on call, as a consequence of which her mother tried to commit suicide by eating fifty sleeping pills and was admitted in the Hedgewar Hospital from 15<sup>th</sup> to 17<sup>th</sup> March, 2020, whereafter her father lost his eyesight being a diabetic person and her father had been very ill and as a consequence of which she could not step out of her house due to the major depression she went through and it was only after a year that she gathered strength to file a complaint and an FIR against the applicant.

32. The prosecutrix has further stated that all the phone backup and data was restored in the applicant's three mobiles phones **9711308006, 0411941006, and 9711367006**, iPhone 8S (gold-pink colour) and iphone XR (Grey colour) and his laptop and Oyo tablet and in his Mac book where every activity on her device was visible in the applicant's phone as well in the iphone 6S which the complainant was using at

that point of time which had been bought by the applicant by taking her money and the bill was also there with the charge sheet and was backed up on the applicant's iPhone 8S and XR and Mac book and all her gmail accounts and her numbers were accessed by the applicant and IDs were created with her numbers. She further stated through her response that the location displayed was at the Police Station Geeta Colony whereas the applicant used to stand in her stairs to send the messages and that he used to park his car in front of her house for hours and kept his official phone at his location that is the reason why almost all the messages informed where the victim was going and coming from and what colour she was wearing. The prosecutrix has thus prayed that the application of the applicant seeking the grant of bail be dismissed.

33. On behalf of the applicant, it has been submitted that the investigation conducted as brought forth through the supplementary charge sheet and the response submitted by the State vide the reply dated 8.11.2021 would bring forth the falsity of the prosecution version as is also be brought forth through the General diary no. 0094A dated 25.3.2021 and the General diary no. 0068A dated 13.3.2021 which read to the effect:

***“General Diary No. 0094A***

*Time I arrived at PS vide DD No. 53 On 16.03.2021 I attended the Hon'ble Court of Sh.Vinod Joshi in connection with protest petition filed by the complainant. The counsel of the accused had produced a set of documents and photographs. The Hon'ble Court had directed to look into the matter. The Hon'ble Court had*

directed to look into the matter. I produced the documents at cyber cell to check the authenticity of the documents. Pallav chaturvedi who is brother of the accused was also present. The Gmail [rohanchaubey9@gmail.com](mailto:rohanchaubey9@gmail.com) and Facebook of accused Rohan chaubery was opened at Cyber Cell/SHD District. The photographs attached in the documents were found in the "Google photos" app with relevant dates. Whatsapp chat backup was found in mail dt. 30.10.2019. A mail dt. 19.12.2019 from deepanshi09babbargmail.com to [rohanchaubey9@gmail.com](mailto:rohanchaubey9@gmail.com) was also found with subject Sorry Rohan. One page mail having booking confirmation on IRCTC received at [rohanchaubey9@gmail.com](mailto:rohanchaubey9@gmail.com) Name of passenger – Deepanshi. Two page mail from [info@bonorganik.com](mailto:info@bonorganik.com) to [rohanchaubey9@gmail.com](mailto:rohanchaubey9@gmail.com) having invoice garment for RS 1999/- Shipping address and billing address –Deepanshi Babbar C 322 geeta apartment contacted on some numbers given by Ms.Deepanshi Babbar. Thereafter the documents were seized vide seizure memo. Thereafter I arrived at PS Geeta Colony. Today the complainant was contacted on her mobile phone and was asked that she had mentioned in the FIR that the accused had forcibly taken her mobile phone, when did he return the same to her. She stated that Rohan had returned her phone in December, 2019 and that she had handed over the same phone to the police which was seized by the police. Facts apprised to SHO sir. Recorded at CCTNS for information.”

and

**“General Diary No. 0068A**

Today I contacted on some numbers given by Ms. Deepanshi Babbar. Ms. Somya Prakash (7836880996) stated that she knew her only for a

*brief period and does not remember any message receiving in name of Deepanshi Babbar. She refused to talk any further stating that she was not interested in Deepanshi Babbar . Thereafter I called Aditya Tomar (9899950618) , the no was found to be out of reach . Then I called Office Staff Veer ( 8130908991 ) who stated that he had a received message that about payment of Loan in which name of Ms. Deepanshi Babbar was mentioned but there was no vulgar / obscene message as such . He further stated that he does not want to be involved in the matter and would not provide his address. Thereafter I called Vinay Yadav ( 9999668265) who stated that he had received messages regarding Loan payment for Ms. Deepanshi, but there was no vulgar message . Vinay also sent screenshots of whatsapp messages which he had received in which name of Ms. Deepanshi Babbar was mentioned . I received a call from Ms. Deepanshi Babbar who started shouting that I was calling and disturbing her friends and relatives . They are working people and had no time and they don't want to go to police or court. I should ask them on phone . and should not involve them any more. I stated that they were called because she had mentioned only their number . Ms. Deepanshi Babbar stated that police had not done anything in the case. She also stated that she would herself bring people whom she wants to be interrogated and that nobody will give their mobile phone to police . She stated that she would bring her them by 4:00 4:30 PM .However neither Ms. Deepanshi Babbar nor any of her relatives /friend / office staff appeared at PS. Facts apprised to SHO sir. Recorded at CCTNS for information .”*

34. Inter alia, it was submitted on behalf of the applicant that fraudulent versions were put forth by the prosecutrix in as much as on 21.9.2021 when the prosecutrix had joined the proceedings through video conferencing she submitted to the effect that her father was hospitalized and that she had been unable to get the assistance of a lawyer and sought to be present on a physical day of hearing to submit certain documents in relation to which a submission was made on 24.9.2021 on behalf of the applicant that the prosecutrix had made false statements even to the extent of stating that her mother had committed suicide before the Trial Court and false averments made in her WhatsApp chat to the applicant to the extent of saying that her father was no more whereas she now seeks to contend that her father was unwell and thus the said documents were permitted to be placed on record with an affidavit of the petitioner with a copy of the same being supplied to the State in advance in relation to which the applicant placed on record the affidavit of the Pairokar of the applicant, i.e., of the father of the applicant Mr.Dhirendra Rao Chaturvedi, dated 30.9.2021 and stated that the complainant on 30.8.2019 had told the applicant that her father was no more and had requested to transfer Rs.3,000/- on a number i.e., **9910624749** through Paytm and the copy of the WhatsApp chats 29.8.2019 to 4.9.2019 was annexed as Annexure A to the affidavit submitted on 30.9.2021 between the prosecutrix and the applicant who states on 30.8.2019 at 11:02:58 a.m. “ Papa is no more” to which the applicant responded on 30.8.2019 at 11:20:52 a.m. “ My condolences are with you.” And the complainant on 30.8.2019 at 12:22:00 P.M. asked the applicant to

send Rs.3,000/- through Paytm urgently for loading of the body and when the applicant asked her for the number she gave the number as **9910624749** on 30.8.2019 at 12:22:55 p.m. The applicant has also placed on record the photographs of the applicant and the complainant with an Index No.869305 of the date 26.8.2021.

35. It was further submitted on behalf of the applicant that as indicated by the status report dated 17.9.2021 submitted by the State, the complainant had produced hard copies of certain mails allegedly sent from gmailID nalayak\_111 qua vulgar messages in relation to which the mail sent in the name of Shiv Kumar to the complainant was found to have been sent from the mobile No. **9899013048** which is in the name of the complainant and that as regards the mail sent to her by email account [rohankumar69@gmail.com](mailto:rohankumar69@gmail.com) registered Google account ID 933092912868 in relation to the same there was no phone number that had been provided and it was thus submitted on behalf of the applicant that he has been falsely implicated in the instant case.

### ANALYSIS

36. On a consideration of the rival submissions that have been made on behalf of either side without any observations on the merits or demerits of the trial that may take place it is essential to observe that the allegations which are made in the FIR relate to the alleged commission of the offence in the year 2019. The charge sheet that the Investigating Agency filed initially and even the supplementary charge sheet that has been filed does not even indicate that the parents of the complainant or even Suman Chawla, through whom the complainant submits that Rs.90,000/- was given when an extortion was made by

the applicant, have even been cited as prosecution witnesses. As contended on behalf of the complainant the mobile of the applicant and his laptop have not been successfully retrieved by the Investigating Agency.

37. Undoubtedly, qua the investigation conducted in relation to the mails sent from [shivroh03@gmail.com](mailto:shivroh03@gmail.com) and [rohankumar69@gmail.com](mailto:rohankumar69@gmail.com) in the year 2020 it is stated to have been found as per the status report submitted by the State that [shivroh03@gmail.com](mailto:shivroh03@gmail.com) was created from mobile No. 9899013048 on 21.2.2020 which is the mobile number of the complainant and the location of the said mobile was at 12/203, Geeta Colony, Delhi and it has been found that the mail sent vide mail address [rohankumar69@gmail.com](mailto:rohankumar69@gmail.com) sent vide Google Account ID 933092912868 had recovery e mail [rohan1248@yahoo.com](mailto:rohan1248@yahoo.com) and was created on 19.2.2009 and there was no phone number found with it and there are also photographs that the applicant has placed on record vide an Index No. 869305 dated 26.8.2021 to show the existence of relations between the applicant and the prosecutrix, the same however does not suffice to detract from the averments made in the FIR and the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix in relation to the alleged voyeurism, stalking and the alleged insertion of the fist/hand of the applicant into the vagina of the complainant and also in view of the specific averments made in the FIR as also stated in the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix as also through the reply filed by the prosecutrix which is supported with an affidavit of the prosecutrix that her mobile had been

snatched by the applicant whereby he accessed the entire password of her email IDs and bank accounts and misutilized the same and also tactfully obtained the password from her phone and thereby allegedly sexually and mentally harassed and tortured her and sent obscene photographs and videos to her parents and other relatives and friends resulting into her state of depression, as a consequence of which the FIR was lodged with delay.

38. Undoubtedly, the State through the status report dated 08.11.2021 has sought to submit to the effect that the complainant had given a list of persons including her parents alleging that the applicant had sent nude/vulgar photographs on their mobile numbers but when these persons were contacted on the phone numbers provided by the complainant, they denied to having received any nude/vulgar photographs of the victim and that in relation thereto there were three audios recorded but as observed elsewhere herein above the Investigating Agency has not even chosen to cite the parents of the complainant/prosecutrix nor Suman Chawla as witnesses. The factum that the applicant was found to be running the OYO kitchen in the hotel where the complainant had gone with her friend Kapil to the Silverkey Executive Stay in Noida, U.P. speaks volumes in relation to the contention of the prosecutrix that the applicant had taken the video recording and CCTV footage of her relations with Kapil and had sent them to persons and to her to blackmail her and to threaten her.

39. Another aspect that cannot be overlooked is that it is well settled that the maxim "*falsus in uno, falsus in omnibus*" has no application in India as laid down by the Hon'ble Supreme Court in

*Gangadhar Behera and Ors v. State of Orissa*; AIR 2002 SC 3633, *Rizan and Anr. V. State of Chhattisgarh, through The Chief Secretary, State of Chhattisgarh, Raipur, Chhattisgarh* : (2003) 2 SCC 661, *Mahendran V. State of Tamil Nadu*, (2019) SCC OnLine SC 251 and *Mani And Others V. State, Represented by Inspector of Police*; 2009 Cr.L.J. 2268, as observed elsewhere herein above the variations in relation to the investigation conducted qua mails from shivroh03@gmail.com and [rohankumar69@gmail.com](mailto:rohankumar69@gmail.com) in the year 2020, at variance from the contentions sought to be raised by the complainant, as also the submission made through the status report of the State dated 08.11.2021 though the complainant had given a list of persons including her parents alleging that the applicant had sent nude/vulgar photographs on their mobile numbers when those persons were contacted on the phone numbers provided by the complainant they denied to having received any nude/vulgar photographs of the victim. In the absence of the said persons even having not been chosen to be cited by the prosecution as witnesses with their statements having also not been placed on record though it has been contended that the audio recordings exist, with Suman Chawla, the person through whom the extorted amount was paid by the complainant allegedly to the applicant and having also not been cited as a prosecution witness, the said aspects at this stage do not suffice to detract from the averments made in the FIR and in the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix in relation to the incidents alleged of the year 2019 qua which the FIR has been

registered of alleged voyeurism , stalking and the alleged insertion of the fist/hand of the applicant into the vagina of the complainant.

40. Though undoubtedly, the said maxim “*falsus in uno, falsus in omnibus*”, relates to the aspect of consideration of testimonies of witnesses during trial, the spirit of its non-application in India and it being only a rule of caution as observed in the verdicts of the Hon’ble Supreme Court referred to herein above, coupled with the observations in Rizan (supra) to the effect:

***“...Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”. (See Nisar Ali v. State of U.P. [AIR 1957 SC 366 : 1957 Cri LJ 550] )”***

it is apparent that the said aspect would essentially have to be borne in mind even at the stage of consideration of a bail application where the

contents of the FIR and a statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix are consistent in relation to all material particulars and also *prima facie* explain the delay in lodging of the same.

### **CONCLUSION**

41. Thus on a consideration of the totality of the circumstances of the case put forth herein above there is no ground for grant of bail. The application is declined.

42. The photographs that are placed on record by the applicant vide Index No. 869305 on the date 26.8.2021 are directed to be placed in a sealed cover and are also directed to be placed in the e-form with password protection by the Registry.

43. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial, if any, that takes place.

**ANU MALHOTRA, J.**

**APRIL 08, 2022**  
**SV**