

BA1 No.64 of 2021

**Hon'ble Ravindra Maithani, J.**

Mr. Siddhartha Sah, Advocate for the applicant.

Mr. S.S. Adhikari, D.A.G. for the State.

The applicant seeks bail in FIR No.522 of 2019, under Section 384, 323, 504, 506 & 34 IPC, Police Station Rudrapur, District Udham Singh Nagar.

The allegations are, in fact, much serious. According to it, it is a case of blackmailing. The FIR reads that the applicant got a false case of molestation lodged against the informant so as to extract money from him. The FIR records that the applicant and the woman's telephonic conversation was recorded. The statement of the informant, recorded under Section 161 of the Code of Criminal Procedure, 1973 ("the Code") reveals that an audio recording of the conversation between the applicant and the woman, who lodged false case of molestation against the informant was stored in a pen-drive and the pen-drive was given to the Investigating Officer ("IO") by the informant.

Initially, counter affidavit was filed by a Mukesh Mishra, who was then posted Sub Inspector, Kotwali- Rudrapur. He is the IO. In the entire counter affidavit, which runs in 19 paragraphs, there is no mention of the audio recording. Was not it a very important piece of evidence? Where is that pen-drive, which, according to the informant (statement under Section 161 of the Code) was given to the IO by the informant? Has it been sent for forensic examination? Has any certificate under Section 65 B of Indian Evidence Act, 1872 was taken by the IO? Has it been made

part of the investigation? These all are not placed before the Court.

On 30.06.2022, when these issues were raised before the Court, the Court observed as hereunder:

“The Court wanted to know from learned State Counsel as to whether that conversation has been made part of Investigation? As to whether its transcript has been prepared? As to whether any certificate under Section 65 B of the Indian Evidence Act, 1872 has been procured? Or as to whether the prosecution relies on such conversation?

Learned State Counsel seeks time.

Let a short counter affidavit be filed on the above points.

List this matter on 14.07.2022, after fresh cases.

In fact, at the very outset, learned counsel for the applicant had informed the Court that the applicant was given general parole, in view of COVID-19 pandemic, and he is still on the parole.

Learned State Counsel is also not aware of it.

Let a report be sought from Sub-jail, Haldwani. The Incharge Sub-jail, Haldwani shall inform as to how the applicant was released from the Sub-jail. Is there any order of parole? If yes, the copy of the order along with comment of Incharge Sub-jail, Haldwani shall reach this Court on or before 12.07.2022. A copy of this order be sent to the Incharge, Sub-jail, Haldwani.”

State has not filed short counter affidavit, as requested on 30.06.2022. State did not file it on 14.07.2022, when the matter was adjourned. The matter was listed on 15.07.2022 and 01.09.2022. It is still not on record.

What is interesting to note is that on these dates, the State was represented by different counsel as hereunder:-

(1) On 30.06.2022, Mr. Siddharth Bisht, Brief Holder for the State.

(2) On 14.07.2022, Mr. V.K. Jemini, D.A.G. with Ms. Meena Bisht, Brief Holder for the State.

(3) On 15.07.2022, again Mr. Siddharth Bisht, Brief Holder for the State.

(4) On 01.09.2022, Mr. Amit Bhatt, D.A.G. for the State.

(5) Today, Mr. S.S. Adhikari is representing the State.

This Court has umpteen times expressed concern that the State is not cooperating in the disposal of the case. State is one of the biggest hurdle in expeditious disposal in the bail matters. After 4 dates, the state failed to file short counter affidavit. There is no response as to why they failed. The transcript of the pen-drive is not on record, which is a necessary piece of evidence.

If the pen-drive, its contents, have not been a part of evidence; if the pen-drive, which the informant allegedly gave to the IO, was not sent for forensic examination; if the IO has failed to obtain a certificate under Section 65 B of the Indian Evidence Act, 1872, is not it a lapse on the part of the IO? And if it is, who is observing it? Who is monitoring it? Perhaps none.

The state of affairs, exhibited by the State in the instant case reflects nothing but, "*chalta hai attitude*", which is dangerous to the rule of law.

Let a copy of this order be sent to Senior Superintendent Police, Udham Singh Nagar. He shall file a short counter affidavit personally and appear before the Court to answer the questions, which have been raised in this order.

Let a copy of this order be sent to Principal Secretary, Law Cum Legal Remembrancer once again.

This Court has done it in the past also. But, perhaps, State is quite indifferent to see that the bail application may get expeditious disposal.

There have been directions of the Hon'ble Supreme Court in a number of cases that the bail applications should find disposal with speed. But how to do that? State has to place material to assist the Court.

The Court requests the Principal Secretary, Law Cum Legal Remembrancer to examine this issue and submit a report to this Court on or before the next date fixed as to what action has been taken to ensure that it is not done in the future and what action has been taken against the officer, who failed to file short counter affidavit on time. The Court expects that it should not be a mere formality. If somebody has failed, strict actions, as per law, should be taken.

List this matter on 27.09.2022.

Let a certified copy of this order be sent to all concerned through E-mail, at once.

**(Ravindra Maithani J.)**

13.09.2022