

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

+ **Bail.App. 1738/2009**

% Date of reserve: 08.09.2009
Date of decision: 14.09.2009

AMJAD ALI ...PETITIONER
Through: Mr. M. Rais Farooqui, adv.

Versus

STATE ...RESPONDENT
Through: Mr. Navin Sharma, APP for state.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers No
may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be Yes
reported in the Digest?

MOOL CHAND GARG, J.

1. This order shall dispose of an application filed on behalf of the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail apprehending his arrest in FIR No. 368/2009 filed by complainant under Section 419/420/468/469/471/354/352 IPC registered at P.S. Anand Vihar, Delhi.

2. Briefly stated the facts of the case are that on 17.08.2009 the FIR was registered at P.S. Anand Vihar on the allegations made by the complainant, that she happens to be a student of B.A, first year in Ambedkar College and the accused was also in

the same college and was her friend. After assuring her that he had good links in some companies and in garb of the promise of getting job asked the complainant to submit her documents i.e. school certificates, address proof photos and other documents. Believing the same, complainant submitted her documents to the accused on the basis of which accused/applicant is harassing her to marry. She has further alleged that accused had made fabricated documents of the marriage and even filed one petition at Ambedkar Nagar, U.P for restitution of marriage and thereafter, accused/applicant along with his associates came to the house of the complainant and threatened her.

3. According to the applicant, the complainant Smt. Barkha is his legally wedded wife who got married with him on 05.05.2006 according to Muslim Rites & Rituals and Dower Amount was fixed of Rs.501/- at the time of Nikah. It is also submitted that the complainant went for honeymoon at different places of India and enjoyed their married lives as husband and wife. It is submitted that it was during May 2009 the complainant received a call from her parents that her mother received a severe heart attack upon which she went to see her mother and never allowed by her parents to join the matrimonial home of applicant/accused. It is thereafter the applicant filed a suit for conjugal Rights before the competent court at Ambedkar Nagar U.P.

4. It is also submitted by the applicant that on 30.07.2009 at

about 4.00 PM, he received a call from the house of the complainant whereby he was called at the house of the complainant where he found the father, mother and sisters of the complainant along with two other unknown persons and was served cold drink after consuming which applicant become unconscious and was found next date i.e on 1.08.09 at Lucknow by the Police in an unconscious condition. It was when brother of applicant Israr Ali could not find him he made a missing complaint which was registered as DD NO. 14-A dated 01.08.2009 at P.S. Anand Vihar, Delhi, wherein it was stated that Amjad Ali was found missing and he had gone to meet Hira Lal Sharma at his residence on 30.07.2009 at about 6.00 pm in his bike No. DL-855-7799 and has not returned since then and therefore action against the Hira Lal Sharma for abduction for calling Amjad Ali. Thereafter on next day i.e.1.08.09 Lucknow police contacted the brother of the applicant/accused, who on receiving this information rushed to Lucknow and brought applicant to Delhi, where his statement was recorded by Police of P.S Anand Vihar.

5. It is also there case when the Amjad Ali handed to his brother Israr Ali an enquiry report along with handed over memo dated 02.08.2009 from P.S. Gosain Ganj, Lucknow was handed over to them.

6. It is also submitted that after the registration of the said

FIR, on the allegations made by the complainant, SHO submitted that "no cognizable offence has been committed in the area of P.S. Anand Vihar nor any cause of action arises in our area, the matter is already subjudice in the court of HCJ Ambedkar Nagar, U.P." vide its report dated 03.08.2009 which reads as under:

Enquiry conducted revealed that the complainant was studying in Ambedkar College, Delhi and the person complained against Amzad Ali was also a student of same college. Both were friends and knowing each other. The person complained against Amzad Ali also filed a suit in the court of HCJ Ambedkar Nagar, U.P. In the said suit he stated that he and the complainant got married on 05.05.06 as per Muslim Sunni Shariyat and the complainant Ms. Barkha Sharma had also changed her name as Shaheen.

Neither the complainant nor the person complained against Amzad Ali has filed/produced any marriage certificate. Amzad Ali could not be met for enquiry, he is reportedly missing vide DD No. 14-A dated 01.08.09. From the enquiry made, it has been found that neither any forged document/marriage certificate has been produced nor used in the area of P.S. Anand Vihar. The complainant only received a notice for personal appearance from the court of law Ambedkar Nagar, U.P. No cognizable offence has been committed in the area of P.S. Anand Vihar nor any cause of action arises in our area. The matter is already subjudice in the court of HCJ, Ambedkar Nagar, U.P. Copy of suit filed by Amzad Ali is enclosed for perusal.

Submitted please.

Sd/-
13.08.09.
S.H.O. P.S. Anand Vihar

7. The main ground urged by the applicant is that the in the instant case no ingredient of the alleged offence is attracted nor the applicant placed any document with the petition of Restitution of conjugal Rights prepared or executed on behalf of the complainant nor the complainant placed anything with her complaint before the magistrate and therefore the question does not arise for preparation of false document nor its use, even

though it is the submission of the petitioner that he has filed such a petition against the complainant.

8. Before this Court learned APP has strongly opposed the bail application and he has submitted that accused has tried to defame the complainant and threatened her for dire consequences such as throwing acid on her face in case she refused to marry with him. He also submitted that complainant has not been married with the accused and there is no such document is there to support this fact and even accused by telling a different name and later on disclosed as Amjad Ali cheated her which fact also creates a doubt on the character of boy and in these circumstances bail should not been granted to him.

9. In so far as the factum of marriage of the complainant with the applicant is concerned, this court is not required to deal with that question at this stage, as the matter is already pending for restitution of conjugal rights in the Court of HCJ, Ambedkar Nagar, U.P. and therefore complainant can raise any defence in this regard that she had not been married with the applicant.

10. The photographs filed by the petitioner and the CD shown by the petitioner to this Court shows that the complainant had been moving around with the petitioner though that cannot be considered as a factum of marriage but certainly shows that there was acquaintance between the parties. In so far as parting

with the document is concerned, even if that is correct whether the documents were mis-used or not would be a matter of evidence. The allegation of the petitioner that the complaint is a counterblast to avoid the assertion of marriage by the petitioner cannot be ruled out at this stage.

11. In these circumstances, the applicant be released on bail in the event of his arrest on furnishing a bail bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of I.O./Arresting Officer subject to the condition that applicant will not try to meet the complainant without her consent and will also not visit her or threat her parents & would join his investigation as & when required. This is also the condition of bail that the applicant would furnish a copy of the documents in his power and possession to the IO, which he has received from the complainant and will not misuse those documents in any manner adverse to the interests of the complainant.

12. Application stands disposed of.

MOOL CHAND GARG, J.

SEPTEMBER 14, 2009
nm/ag