

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

% *Reserved on: 16th May, 2013*
Date of Decision: 21st May, 2013

+ **BAIL APPLN. 779/2013**

SUSHIL KUMAR Petitioner
Through: Mr. Sanjeev Kumar, Advocate.
versus
GOVT. OF NCT OF DELHI Respondent
Through: Ms Jasbir Kaur, APP.

+ **BAIL APPLN. 780/2013**

ASHISH GUPTA Petitioner
Through: Mr. Sanjeev Kumar, Advocate.
versus
GOVT. OF NCT OF DELHI Respondent
Through: Ms Jasbir Kaur, APP.

+ **BAIL APPLN. 805/2013**

SUNITA Petitioner
Through: Mr. Sanjeev Kumar, Advocate.
versus
GOVT. OF NCT OF DELHI Respondent
Through: Ms Jasbir Kaur, APP.

CORAM:
MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

1. These are three bail applications filed under section 438 of the Cr.P.C. for grant of anticipatory bail in FIR No.236/2013, P.S. Kalyan Puri registered under section 498A/ 313/ 34 of the Indian Penal Code.

2. The present applications have been filed in the following circumstances. Aarti Gupta, the complainant, was married to Ashish Gupta on 15.01.2013. On 09.04.2013, she filed the complaint with the police narrating that immediately after the marriage, her husband Ashish Gupta, father-in-law Sushil Kumar and mother-in-law Mithilesh started torturing her and also verbally abusing her. According to the complainant, her husband Ashish Gupta used to allege that she was having an illicit affair with some other boy. Unable to bear the torture Aarti went to her parental house but her parents sent her back to the matrimonial home. The mental and physical torture and abuse, however, continued. On 02.04.2013, on coming to know that the complainant was pregnant her in-laws took her to the house of one Sunita (one of the applicants herein) and after verbally abusing the complainant and alleging that the child in her womb was not that of Ashish Gupta, they forcibly made her swallow abortion pills. She was left unattended and it was on 05.04.2013 that the in-laws of the complainant came back and called the parents of the complainant, apparently to inform them of her condition. The complainant was taken to the parental house on 05.04.2013. On that day she started bleeding. She was treated by Dr. Sapna Verma at Kondli. The doctor told the complainant that the child may be saved. Some ultrasound treatment was given to the complainant. However, on 09.04.2013 she started bleeding again heavily whereupon her mother

brought her to the hospital. There her statement was recorded. On the basis of the statement and the MLC of the complainant a case under section 498A/ 313/ 34 of the IPC was registered.

3. The applicants herein filed bail applications under section 438 of the Cr.P.C. before the Sessions Court which were turned down. The learned Sessions Judge perused the MLC wherein the girl had informed the doctor that some MTP pill (abortion pill) was given to her forcibly by her father-in-law. The Sessions Court also noted that in her statement recorded under section 164 of the Cr.P.C., the complainant had stated that she had been pressurised by her in-laws and husband to give statement in their favour. The complainant told the Sessions Judge in the Court that she was made to consume the medicine forcibly and was pressurised to make statements exonerating the bail applicants.

4. On a consideration of the entirety of facts and the nature of the allegations, the Sessions Court found no ground for the grant of anticipatory bail; the applications were dismissed.

5. The learned counsel for the applicants and the learned Additional Public Prosecutor have been heard. The only submission of the counsel for the applicants was that the matter has now been compromised or settled between both the sides and that the complainant has agreed to withdraw the

complaint. It was pointed out that the complainant and Ashish Gupta, her husband, have filed a joint statement before the SHO concerned that the disputes between them have been settled and that they have agreed not to file any case in any Court of law against each other. It is accordingly prayed that all the three applicants may be granted anticipatory bail. It is also submitted by him that the settlement was voluntary and there was no pressure of any kind upon the complainant.

6. The learned Additional Public Prosecutor strongly opposed the submissions of the counsel for the applicants. She submitted that this is a case where the allegation is of causing miscarriage of a woman which is a serious offence under section 313 of the IPC and applying the spirit of the judgment of the 3-Judge bench of the Supreme Court in **Gian Singh vs. State of Punjab : (2012) 10 SCC 303**, such matters cannot be settled as they are not private in nature but have a serious impact on society. She also submitted that it is a question of safety and security of a woman and this Court should not grant anticipatory bail where the body of the woman has been violated without her permission. She further contended that there is prima facie evidence to show the involvement of all the three applicants in the crime and their custodial interrogation is required on the basis of the complaint.

7. I have carefully considered the rival submissions and weighed the circumstances of the case. The complainant was present in Court. From her demeanour and the manner in which she responded to the queries of the Court, it appears to this Court that she was under tremendous pressure and compulsion. She clearly appeared traumatised. From the complaint it is seen that there is enough material to show that all the three applicants had significant roles in forcing her to swallow the abortion pills. The complainant Aarti Gupta is of tender age and at this age serious damage could have been caused to her reproductive system by forcing her to swallow abortion pills without medical advice or supervision. In her complaint, she has referred to some *Sadhu Baba* whose assistance was taken by the applicants for causing the miscarriage. The MLC has been perused by the lower court wherein it has been recorded that the complainant had informed the doctor that she was forcibly given abortion pills. The letters alleged to have been written by her exonerating the applicants herein do not appear to me to be voluntary and in fact she has stated so before the lower court. She has also stated before the lower court, as recorded in the impugned order, that she was made to consume the medicine forcibly and was pressurised into giving a statement exonerating the applicants. The so-called settlement between the complainant and her husband appears unreal and concocted.

8. Considering the MLC and the serious nature of the allegations made in the complaint, the applications for anticipatory bail cannot be allowed. I reject them.

9. This Court takes a serious view of the matter. It is clear that unbearable pressure is being brought upon her by the in-laws of the complainant. The safety and security of the complainant is another concern in this case. The complainant says that she is now residing in her parental home and this has been confirmed by her father who is also present in Court. I, therefore, direct the SHO concerned to afford adequate protection to the complainant by arranging a visit by a constable to her parental home every day in the morning and in the evening to ensure that no harm is caused to her. I also direct the trial court to verify the age of the complainant at the time of the marriage. It also appears to me that the police should, as a part of their investigation in this case, trace the so-called *Sadhu baba* whose assistance was allegedly taken by the applicants and make a thorough investigation by recording his statement and dealing with him in accordance with law.

9. With the aforesaid observations the anticipatory bail applications of all the three applicants are rejected.

(R.V. EASWAR)
JUDGE

MAY 21, 2013
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