

\$-59 & 50.

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

+ BAIL APPLN 2369/2016

DEEPAK DUA

..... Petitioner

Through: Mr. Aman Lekhi, Sr. Adv. with Mr.
Gurpreet Singh, Advocate

versus

STATE OF NCT OF DELHI & ANR

..... Respondent

Through: Mr. Rajat Katyal, APP with SI
Santosh, PS New Ashok Nagar
Mr. G.P Thareja, Adv. for the
complainant

+ BAIL APPLN. 2447/2016

KRISHAN KUMAR

..... Petitioner

Through: Mr. Lokesh Kumar Mishra and
Sameer Kumar Ojha, Advocates

versus

STATE (GOVT OF NCT DELHI)

..... Respondent

Through: Mr. Rajat Katyal, APP with SI
Santosh, PS New Ashok Nagar
Mr. G.P Thareja, Adv. for the
complainant

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

2

%

ORDER
29.11.2016

Issue notice. Notice is accepted on behalf of the State as well as on behalf of the complainant. I have heard learned senior counsel for the petitioner in the aforesaid bail applications, who are two of the co-accused in case FIR No.571/2016 registered at PS New Ashok Nagar under Section 376D/506/34 IPC. I have also heard the learned APP as well as counsel for the complainant at some length.

It is pointed out by Mr. Lekhi, learned senior counsel for the petitioner in Bail Appl No.2369/2016 that the allegations against the accused are that on the first occasion gang rape was committed by the two petitioners in November 2013, thereafter in March 2014 and lastly on 08.03.2016 rape was committed by Krishan Kumar. However, the FIR in question was registered only on 05.11.2016. However, Mr. Thareja, counsel for the complainant states that the complaint was initially given on 02.11.2016, but the same was got registered only on 05.11.2016 as the I.O. ~~was~~ ^{my} colluded with the accused. In any event, it is not disputed that no complaint was given regarding the alleged rape/ gang rape prior to 02.11.2016.

Mr. Lekhi has pointed out that on 21.09.2016, the complainant had filed an application under Section 156(3) Cr PC against the accused Krishan Kumar in relation to a property transaction and payment of a cheque. In the said application, there was no whisper of any rape and the allegation in the ~~second~~ ^{said} complaint was only against Krishan Kumar, and no allegation of any nature whatsoever was made against Deepak Dua. Mr.Lekhi submits that in her statement recorded under Section 164 Cr PC, for the first time, the

complainant sought to rope in the wife of Deepak Dua i.e. Vandana Dua into the offence of gang rape. He points out that the complainant even refused internal medical examination as recorded in the FIR itself.

Mr. Thareja has submitted that the complainant had not refused the internal medical examination and it was so recorded by the I.O. since he was colluded ^{by} ~~with~~ _{mr} with the accused. He submits that a complaint to this effect was given by the complainant on 24.11.2016 i.e. nearly 20 days after the registration of the FIR.

Mr. Katyal has pointed out that medical examination of the complainant was got conducted. However, the internal medical examination was not done by the doctor on account of her refusal to get herself medically examined.

It is also pointed out by Mr. Lekhi that in the face of allegations of gang rape allegedly perpetrated in November 2013 and March 2014, it does not stand to reason that the accused Krishan Kumar would enter into a flat buyer agreement with the builder, wherein the complainant was shown as the second purchaser along with Krishan Kumar. He also points out that even before the lodging of the FIR in question, on 06.10.2016, Krishan Kumar had made a complaint to the Bank wherein he and the complainant were having a joint account, since he had apprehension that the complainant may misuse the said account. It is also pointed out that the petitioner Deepak Dua has already joined the investigation, whereas Krishan Kumar's police remand was taken for investigation and he is in judicial custody since 06.11.2016.

Mr. Thareja has submitted that the joint account was opened by Krishan Kumar by manipulation and by defrauding the complainant by

4

showing his name as the first name. He submits that in that respect a case is already pending in Gautam Budh Nagar Distt. The flat jointly held by Krishan Kumar and the complainant was also sought to be misappropriated by Krishan Kumar by using the property and funds of the complainant.

The financial transaction between the complainant and Krishan Kumar, to which Deepak Dua in any event is not a party, is not the subject matter of the FIR in question. In that respect, the complainant has taken other legal remedy and, therefore, those considerations do not come in the way of this court in considering the present bail applications.

Looking to the facts and circumstances, as taken note of herein above, I am inclined to allow both the bail applications. Accordingly, Deepak Dua is granted anticipatory bail in the matter. In case of his arrest, he shall be released on bail upon his furnishing personal bond with one surety in the sum of Rs.20,000/- to the satisfaction of the arresting officer. This is further subject to the condition that he shall not coerce, pressurise or threaten the complainant or get in touch with her or tamper with any evidence. He shall join the investigation as and when called for by the I.O. He shall provide his mobile phone number, which shall be kept in working condition at all times and shall not change the same without prior intimation to the court.

The petitioner Krishan Kumar is also directed to be released on bail upon his furnishing personal bond with one surety in the sum of Rs.20,000/- to the satisfaction of the Trial Court. This is further subject to the condition that he shall not coerce, pressurise or threaten the complainant or get in touch with her or tamper with any evidence. He shall join the investigation as and when called for by the I.O. He shall provide his mobile phone number, which shall be kept in working condition at all times and shall not

change the same without prior intimation to the court.

The applications stand disposed of. Dasti.

NOVEMBER 29, 2016

sr

5


VIPIN SANGHI, J