

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

+ CRL.M.C. 4210/2015

% Decided on 1st August, 2016

SONIA SEHRAWAT

..... Appellant

Through:

versus

PRAVEEN SEHRAWAT & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 31st August, 2015, passed by the learned ASJ, Fast Track Court, granting anticipatory bail to respondent No.1, who was the husband of the petitioner in case FIR No. 208/2014 under Sections 498A/406/354/376/511/34 IPC, registered at P.S. Vasant Kunj (South), the petitioner prefers the present petition seeking to set aside the said order and cancellation of the bail granted.

2. Learned counsel for the petitioner contends that the order impugned is perverse and the learned trial court has not dealt with three major allegations of the petitioner qua the respondent No.1, i.e. (1) demand of Rs.22 lacs given by the petitioner's father for the construction of her house; (2) petitioner was

subjected to unnatural sex by respondent No.1 and (3) due to misconduct of respondent No.1 she has suffered two abortions.

3. Heard learned counsel for the parties. The order impugned passed by the learned ASJ, Fast Track Court is as under:-

“By this order I shall dispose off an application under Section 438 of the Cr.P.C. for grant of anticipatory bail filed on behalf of the applicant/accused Praveen Kumar.

Submissions have already been addressed.

Allegations in the FIR are that the complainant Sonia Sehrawat got engaged on 09.10.2011 to the applicant at Maples Country Club, Palam Vihar and she got married to him on 10.02.2012. Parents of the complainant spent Rs. 45,00,000/- in the marriage and engagement as per the directions of her father-in-law/accused Krishan Kumar Sehrawat and her brother-in-law Naveen (dewar). It is alleged that her husband, father-in-law, Omwati (mother-in-law), dewar Naveen and other in-laws Mahesh Dahiya, Rajesh Sahu, Sonia and Sangeeta were not satisfied with the dowry articles given in the marriage as well as the arrangements of marriage and made sarcastic comments right from the second day of the marriage. Omwati, Sangeeta and Sonia directed the complainant to get clothes, jewelery and gifts for her relatives and then on the occasion of Tisar with a list. The husband did not support the complainant when she protested. On 16.02.2012, the complainant went to her parental home but her husband starting ignoring her and claimed that he was to get married to some other person.

It is alleged that on 22.02.2012 and 24.02.2012 Sangeeta and Rajesh Sahu started demanding diamond ring and gold chain. On 28.02.2012 the complainant came back

to her matrimonial home and her father gave all articles and jewelery as demanded but her in-laws did not like some clothes and taunted her father. When she objected, the complainant was beaten up by her mother-in-law and dewar Naveen at the instigation of her husband in front of all his relatives.

On 01.04.2012, the complainant found that she was pregnant and disclosed the news to her in-laws and requested for proper medical check-up. However her husband and mother-in-law to abort the foetus. Complainant refused and tried to save her child but her husband treated her like a market girl and forcefully had intercourse with her and hit her wildly in the process. Her husband did not respond to her several request in this regard. On 12.04.2012, in-laws of the complainant directed her to get her child aborted to which the complainant protested and also informed her father and her family visited her matrimonial home. On 14.04.2012 her dewar Naveen started fighting with her and her husband also kicked and punched her due to which she started bleeding. She requested her mother-in-law and father-in-law for help but they refused. Her mobile phone was taken away from her and she was not allowed to talk with her father although she was continuously bleeding. She fell unconscious due to stomach pain and bleeding. Her in-laws took her to a doctor who stated that the child/foetus was damaged 85% due to late first aid and doctor told her husband as to why he did not seek medical help earlier. It is specifically stated in the FIR/complaint that doctor has recorded that the child had died due to late visit in the hospital and on 18.04.2012 the child of the complainant was aborted.

It is further alleged that the doctor had advised bed rest and not to indulge to intercourse for 30 days but the husband forcefully indulged in sexual intercourse with her and also forced her for indulge in unnatural intercourse. He husband was using sex drugs before intercourse and physically harassed her. On 24.02.2012 her husband forgot

his mobile phone in the bedroom and complainant checked his mobile phone and messages and found that her husband was engaged with one Anjali Kaushal. Upon gaining the information that her husband was planning for remarriage, she called on the number of Anjali Kaushal and told her not to interfere in her matrimonial life because of which her husband became angry and threatened to kill her. Father of the complainant came to her matrimonial home and asked for the reason of abortion and beatings. Father-in-law directed her to deposit Rs.10,00,000/- in her name as her husband needed money to purchase a vehicle. Her husband started demanding for fixed deposit which was given by the father of the complainant as a gift. It is alleged that mother-in-law has taken away all her jewelery on the pretext of safe keeping which were later handed over by her to Sangeeta and Sonia as gifts. When the complainant asked for her jewelery, her husband slapped her. When construction of the house was going on, her father-in-law demanded Rs. 22,00,000/- from the father of the complainant.

It is further alleged that on 26.05.2012, her dewar Naveen Sehrawat tried to sexually assault her in her bedroom against her will and when she protested, nobody came for her help. On 30.05.2012, Naveen again tried to sexually assault her and when she told her husband, he beat her up.

In the first week of December, 2012, the complainant conceived against and did not want to share the news with her husband and in-laws to save her child. However she suffered stomach pain due to which they came to know about her pregnancy and against they tried to get her child aborted to which the complainant objected.

On 10.12.2012, the complainant was taken to attend the marriage of the brother of her husband although she was not willing. Her husband drove the car recklessly due to which she suffered an abortion at AIIMS. It is alleged that

the medical history explains as to who she was victimized by her husband and his family members. The doctors at AIIMS had advised her for complete bed rest but her husband and his family beat her up. Subsequently the complainant was left in her parental home by her husband to get her husband remarried.

On 21.11.2013, the complainant tried to come back to her matrimonial home but she was not allowed to enter and she called the PCR by dialing no.100 at her matrimonial home. The complainant and her in-laws were taken to police station Vasant Kunj where her father-in-law agreed to take her back in the matrimonial home. When she reached her matrimonial home with police officials, her father-in-law ran away and locked her matrimonial home giving false information to the police alleging that the complainant was trying to commit suicide.

Counsel for the applicant/accused has argued that the accused has twice been granted interim protection on his applications for grant of anticipatory bail. He was first granted interim protection by the Court of Gulshan Kumar, Ld. ASJ on 13.12.2013 as at that stage FIR had not yet been registered and three days notice was directed to be served upon the accused after registration of the FIR. Thereafter notice was issued by the IO and the accused filed another application for grant of anticipatory bail in which he was granted interim protection for one month by order dated 17.07.2014 by the Court of G.P. Singh, Ld. Special Judge, CBI, PHC, New Delhi. In the said order the Ld. Court had observed that the IO had not shown any material as required for compliance with the directions of the Hon'ble Supreme Court in the case of Arnesh Kumar Vs. State of Bihar & Anr., 210 (2014) DLT 599 (SC). Subsequently three days pre-arrest notice was issued to the applicant and he filed the present bail application.

It is submitted that the allegations contained in the FIR are absolutely false. Allegations of forced abortion by physical torture are contrary to record. It is further submitted that an attempt has been made by the complainant to rope in the entire family of the accused with a view to pressurize them.

Counsel for the complainant on the other hand has submitted that dowry articles are yet to be recovered and he has filed a list of said articles. He has also filed medical documents to state that the complainant had suffered abortions due to physical beating.

These documents which have been filed by counsel for the complainant have also been collected by the IO. As per these documents, the complainant had gone for treatment to Rural Health Centre, Mahipal Pur on 17.04.2012, 29.11.2012, 12.12.2012 and 13.12.2012. The IO has taken a written statement of Dr. Radha Nirmal of the said Rural Health Centre in which it is stated under:-

“Sir

With reference to the above and as per the records provided, it is submitted that:

1. Mrs. Sonia Sehrawat, 24 years, female, reported to my clinic on 17.04.2012 with the complaints of amenorrhoea of one and a half months and spotting of two days duration. She was clinically examined and urine test was positive for pregnancy. According she was advised medication alongwith Ultrasound (Obst.) and other tests. Ultrasound (Obst.) done on 18.04.2012 diagnosed her suffering from incomplete abortion and accordingly evacuation was done and RPOC were removed the same day. Again, Mrs. Sonia Sehrawat visited my clinic on 25.04.2012 for regular check-up and on

03.05.2012 with complaint of perennial itching. She was advised accordingly.

2. Later, Mrs. Sonia Sehrawat came to my clinic on 29.11.2012 with the complaint of overdue by three days and history of urine test for pregnancy was positive as told by the patient. She advised medication and some tests as done in early pregnancy. She again visited the clinic on 03.12.2012 and 07.12.2012 with the complaint of while discharge per vaginal and headache respectively. She was advised medication for the same.
3. Mrs. Sonia Sehrawat visited the clinic on 12.12.2012 with an Ultrasound report dated 08.12.2012 which revealed early pregnancy (4wk+1 day +/- 5 day) with threatened abortion and accordingly the medicines were prescribed to continue her pregnancy.
4. On 13.12.2012 Mrs. Sonia Sehrawat Again visited the clinic with the complaints of bleeding P/V and was diagnosed as incomplete abortion. Later, an ultrasound report brought in the afternoon did not show any product of conception and minimal free fluid in POD. Mrs. Sonia was accordingly treated with medicines and no surgical intervention was done.
5. This is for your information only.

(DR.RADHA NIRMAL)”

The complainant had specifically stated that the doctors who had treated her at the time of her first abortion have recorded in her medical papers that due to late visit in the hospital, child had died on 18.04.2012. The medical prescription dated 18.04.2012 of Rural Health Centre, Mahipal Pur nowhere records any such fact. Even medical prescription of AIIMS dated 11.12.2012 filed by the complainant does not record any such medical history as alleged by the complainant in the FIR.

Considering the facts and circumstances of this case, I admit the applicant/accused to anticipatory bail. It is directed that in the event of arrest, the IO shall release the applicant/accused to bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the concerned IO/SHO.

Copy of the order be given dasti.”

4. As noted above, the learned trial court has in detail noted the allegations in the FIR including the father-in-law demanding a sum of Rs.22 lacs from the father of the complainant, Respondent No.1 indulging in unnatural intercourse and two abortions caused to the petitioner.

5. A perusal of the FIR shows that the allegation of demand of Rs. 22 lacs was against the father of respondent No.1 and not against respondent No.1. Further the learned ASJ noted the submissions in the written statement of Dr. Radha Nirmal of the Rural Health Centre, where the abortion was performed, which prima facie shows that the same was not due to assault.

6. Even otherwise, it is a trite law that denial of bail is not to ensure a pre-trial detention. In cases, where there is no apprehension of the accused absconding, fleeing away from justice and tampering with the evidence, bail is required to be granted as a rule. In the decision of the Supreme Court reported as (2012) 1 Supreme Court Cases 40 *Sanjay Chandra Vs. Central Bureau of Investigation*, it was held:-

“22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

7. Considering the facts of the case I do not find the impugned order to be perverse warranting interference.

8. The petition is dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 01, 2016
‘n’