

\$~27

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

+ BAIL APPLN. 29/2017

ANIL KUMAR

.....Petitioner

Through: Mr. S. Satyanarayan, Advocate.

Versus

STATE

....Respondent

Through: Mr. Ashok Kumar Garg, APP for the
State with ASI Sushma, PS. Uttam
Nagar.

Complainant in person.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

%

25.07.2017

1. By the present application filed under Section 438 of Cr. P.C., the petitioner is seeking grant of anticipatory bail in FIR No. 873/2016 registered under Sections 376/506 of the IPC at Police Station Uttam Nagar, Delhi.

2. As per the prosecution case, the complainant was running a beauty parlor from her house, whereas the accused/applicant was running a jewellery shop in front of the shop of the complainant and both of them had family relations with each other since the past 5-6 years. On 30.09.2016, the complainant went to the shop of the applicant to collect the jewellery, which she had given to the applicant for cleaning. It is stated that the applicant offered her a cold drink and on consumption of the drink, the prosecutrix fell

unconscious and the accused/applicant committed rape upon her. She regained consciousness after half an hour and realised that something wrong had happened with her. Thereafter, the applicant called the prosecutrix and took her to Uttam Nagar Phase-III, where he again made physical relations with her. After one week, the applicant again established physical relations with the prosecutrix under the threat of kidnapping her daughter. The prosecutrix then told her husband about the incident. Thereafter on 18.12.2016, the applicant went to the house of the prosecutrix along with four other persons and called her husband outside, where an altercation took place between them. FIR No. 873/2016 was registered thereafter.

3. Mr. S. Satyanarayan, learned counsel for the accused/applicant contended that the applicant has been falsely implicated in this case as there was no whisper about any of the allegations contained in the FIR till 18.12.2016 i.e. when the altercation took place between the husband of the complainant and the applicant. The parties had known each other from the past 5-6 years and it was only when the applicant demanded the money owed to him by the husband of the complainant, which he had given to him by way of loan, the complainant thought of lodging the present fabricated complaint. He added that all such allegations are false and concocted since the complainant never raised any alarm or got herself medically examined from the date of the first incident i.e. 30.09.2016 till the date on which he demanded his money from her husband i.e. 18.12.2016.

4. The learned counsel for the applicant further contended that the complainant and the applicant were maintaining a consensual physical

relationship with each other, which can be corroborated by the CDR's showing that the complainant and the applicant made various calls to each other from different mobile numbers both prior and after the incident. He also relied upon the various photographs of the complainant and the applicant to prove that they were in a consensual physical relationship.

5. Furthermore, the learned counsel for the applicant pointed out the statement of the prosecutrix, which she gave to the Investigating Officer, stating that no such incident took place as alleged in her statement in the FIR and in her statement under Section 164 Cr. P.C. and therefore, no case is made out against the accused/applicant.

6. Refuting the contentions of the applicant, Mr. Ashok Kumar Garg, learned APP appearing for the State submitted that in compliance of the direction of this Court vide order dated 10.04.2017, the statement of the prosecutrix under Section 164 Cr. P.C. has been recorded again wherein she stated that she was called by the applicant at one spot, where she got drunk and thereafter became unconscious. Thereafter, she went to Karol Bagh with the applicant, where he told her that he had done everything with her and further clarified by saying "*Jo husband wife karte hain*". She further stated that the applicant had recorded the whole incident. Therefore, this statement of the prosecutrix under Section 164 Cr. P.C. corroborates the contents mentioned in the FIR and hence, the present anticipatory bail application should not be allowed.

7. I have heard the learned counsel for the parties and perused the material available on record.

8. Admittedly, the first incident took place on 30.09.2016. However, the complainant lodged the complaint only on 19.12.2016. No explanation has come forth from the complainant as to why there was a delay of almost three months in lodging the present complaint. There is no MLC on record prior to 18.12.2016. Further, it is difficult to fathom why the complainant joined the company of the applicant, not once but twice, after the first incident took place. It is also pertinent to note that she did not raise any alarm at any time before 18.12.2016 i.e. the date when the altercation between the husband of the complainant and the applicant took place.

9. At the outset, the change of statement and the conduct of the prosecutrix cannot be lost sight of. First, she took a stand against the accused, then she changed her version favoring the accused and thereafter, she again changed her version against the accused. Even if it is believed that she changed her statement under the influence of alcohol, she was under no compulsion to go and meet the accused where he called her before going to Karol Bagh. These shaky statements of the prosecutrix forces this Court to draw an adverse inference against the prosecutrix and in favor of the accused.

10. Taking into consideration the aforesaid observations and the facts and circumstances of the present case, the applicant is granted anticipatory bail subject to the following conditions:-

- i) That the applicant shall furnish his personal bond in the sum of **Rs.25,000/-** with one surety of the like amount, subject to the satisfaction of the Arresting Officer/SHO concerned;

- ii) That the applicant shall cooperate with the investigation and make himself available for interrogation by the police officer as and when required;
- iii) That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- iv) That the applicant shall not leave India without the previous permission of the Court.

11. Before parting with this order, this Court would like to place it on record by way of abundant caution that whatever has been stated in this order has been said only for the purpose of disposing of the prayer in the bail application made by the applicant. Nothing contained in this order shall be construed as an expression of a final opinion on any of the issues of fact arising for decision in the case, which shall naturally be done by the Trial Court.

12. The petition stands disposed of.

SANGITA DHINGRA SEHGAL, J

JULY 25, 2017

gr//