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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 17th November, 2017
Order pronounced on: 4th December, 2017

+ **BAIL APPLN. 428/2017**

ANIL GERA

....Petitioner

Through: Mr. Prashant Sharma, Mr. Kartik Khanna
Advocates.

Versus

STATE

.....Respondent

Through: Mr. Mukesh Kumar, APP for the State
with W/ASI Parvati, P.S. Subhash Place
Mr. B.S. Rana, Mr. Satyam Sisodia and
Mr. Manish Awasthi Advocates for
Complainant.

+ **BAIL APPLN. 429/2017**

AKHIL GERA

....Petitioner

Through: Mr. Prashant Sharma, Mr. Kartik Khanna
Advocates.

Versus

STATE

.....Respondent

Through: Mr. Mukesh Kumar, APP for the State
with W/ASI Parvati, P.S. Subhash Place
Mr. B.S. Rana, Mr. Satyam Sisodia and
Mr. Manish Awasthi Advocates for
Complainant.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 438 of the Code of Criminal Procedure (hereinafter referred 'Cr.P.C.'), the petitioner seeks **grant of Anticipatory Bail** in FIR No. 35/2017 under

Sections 498A/406/354/377/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Subhash Place, New Delhi.

2. The brief facts of the case are that after getting married to Mr. Akhil Gera on 22.11.2015, the complainant was subjected to mental torture by the petitioners for bringing insufficient dowry and substandard articles. After returning from her honeymoon in Australia, she was repeatedly asked to bring more cash, a Rolex watch, plot, jewellery etc from her father. At the time of marriage, the complainant was pursuing her architecture course from Pearl Academy, Naraina, New Delhi and was assured that there would be no objection in her study post marriage. However, the petitioners refused to pay the college fees of Rs. 5.25 Lakhs which was eventually paid by the father of the complainant. The complainant also states that she was subjected to un-natural sex without her consent by her husband and that her father in law, Mr. Anil Gera tortured her physically, sexually and mentally.
3. Mr. Prashant Sharma, learned counsel for the petitioners contended that the prosecution's story is a concocted story which arose due to the friendship of the complainant with Archit Kawatra, wherein they chatted till late nights and he visited their house when the complainant was alone at home, to which the petitioner had objections; that Section 377 and 354 IPC is an afterthought and an advancement to the F.I.R. which were registered when the family of the petitioner declined to bow down to unreasonable demands of money by the father of the complainant.

4. The Counsel for the petitioner further submitted that the petitioners live in a well knit family with their permanent residence in Delhi due to which their chances of fleeing from the hands of justice are negated and thus Anticipatory Bail be granted.
5. Per Contra, Mr. Mukesh Kumar, learned APP for the State vehemently opposed the bail application and submitted that the petitioner is not liable to be granted Anticipatory Bail as he has been actively involved in the commission of a serious offence which is cognizable and non-bailable.
6. I have heard the learned counsel for the parties at length and perused the material on record.
7. **Section 498A of the Indian Penal Code, 1860** lays down the legal provisions regarding Husband or relative of husband of a woman subjecting her to cruelty:-

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or

is on account of failure by her or any person related to her to meet such demand."

8. The explanation to above section includes cruelty as any willful conduct on the part of the husband or relative of husband of a woman, which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. To amount to cruelty, there must be such willful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case. The cruelty may be mental or physical, intentional or unintentional. In such cases, the cruelty will be established if the conduct itself is proved or admitted.
9. The statement of the Complainant recorded under Section 161 Cr.P.C has fully corroborated with her statement recorded under Section 164 Cr.P.C. wherein she deposed as under :-

"When I was asleep in my room my father in law entered my room and tried to outrage my modesty and when I tried to raise my voice, he threatened me of dire consequences and asked me to keep mum and not tell anything about it to anyone especially to my parents. When my father in law was sure that I had not disclosed anything, he started coming inside my room regularly at odd hours and tried to molest me.

My father in law used to call me to the kitchen in the garb of making food and tried to hold my hand and molest me. He tried to be physically close to me in public in the garb of showing affection to which I was never comfortable but kept silent because of my family and society.”

10. The statement made by the complainant under Section 161 Cr.P.C. further finds support from her statement recorded under Section 164 Cr.P.C which reads as under:-

"From the very next day of marriage, I was subjected to mental torture by my husband and in laws in connivance with each other on account of bringing insufficient dowry and substandard articles. Even after coming back from Australia, I was repeatedly asked to bring more cash from my father as my in laws were in dire need of money for their personal expenses ad repayment of loans. After a few days of marriage, Akhil Gera took my phone and removed the SIM Card from the handset and kept the same with him. When I asked him the reason for the same, no satisfactory reply was given to me. On 18th May, 2016 at around 10P.M. my father in law barged into my room and took away all the jewelry from me.”

11. Reference may be made to the judgement of the Apex Court in ***Bhadresh Bipinbhai Sheth v. State Of Gujrat*** reported in ***(2016) 1 SCC*** wherein the principles for grant or refusal of anticipatory bail have been laid down, which are reproduced here as under:-

"(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

- (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- (c) The possibility of the applicant to flee from justice;*
- (d) The possibility of the accused's likelihood to repeat similar or other offences;*
- (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- (g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;*
- (h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as*

to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

12. From the perusal of the material on record and relying upon the principles laid down by the Apex Court, the allegations against the petitioners and gravity of the alleged offence, this Court does not deem it fit to grant discretionary relief of Anticipatory bail to the petitioner.
13. Accordingly, the petition for Anticipatory Bail stands dismissed.
14. Before parting with above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

SANGITA DHINGRA SEHGAL, J.

DECEMBER 4, 2017

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