

1# \$~

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

+ **BAIL APPLN. 503/2017**

SANGEETA DATTA

..... Petitioner

Represented by: Mr. Mohit Mathur, Sr.
Advocate with Mr. Vikram
Batra, Advocate.

versus

STATE & ANR

..... Respondents

Represented by: Mr. Amit Ahlawat, APP for the
State with ASI Naresh Kumar,
PS Tilak Nagar.
Mr. Vipin Bhasker, Advocate
for the complainant with
complainant in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
08.05.2017

%

1. By this petition the petitioner seeks regular bail in case FIR No. 393/2016 under Sections 498A/406/34 IPC registered at PS Tilak Nagar, Delhi on the complaint of her daughter-in-law Ms. Neha Datta.
2. The allegations of the complainant in the above noted FIR are that her marriage was solemnised to Sumit Datta, son of the petitioner on 3rd November, 2014 as per Hindu Rites and Ceremonies. Before the marriage the petitioner claimed that her son was having his own business of courier service in Australia and he owned trucks and transport business. However, when she shifted to Australia she found out that Sumit Datta was only a courier boy in a courier service company and had no trucks or any transport business.

3. The allegations against the petitioner were that immediately after the marriage she took all her jewellery, cash, gifts and clothes. Even on asking they were not returned. It is alleged that on 5th November, 2014, itself her husband who was in drunken condition beat her and physically assaulted her. In the month of January, 2015 when her application for visitors visa was allowed, the petitioner asked the complainant to bring ₹2 lakhs from her mother as per the tradition that the bride's family has to bear the expenses for going to Australia. Her mother somehow managed ₹70,000/- which she gave to the petitioner. On reaching Australia, behaviour of her husband and in-laws worsened and on 14th January, 2015, after her husband returned from work, the petitioner tried to stop her husband from entering the house as he was drunk, however, on entering he abused and physically assaulted the complainant when the younger sister-in-law of the complainant made a complaint to the Australian Police.

4. She further alleges that her husband was involved in two attempts of rape cases in Australia which fact was concealed from her. Further, on the request of husband of the complainant her application for permanent visa was cancelled and on expiry of the tourist visa she had to come back to India in May, 2015. It is alleged that in December, 2015 complainant's husband came to India and again assaulted her and when she made a call to the police, on a complaint, the husband apologised for his acts and promised not to repeat the acts. Thus the complainant lodged FIR No.1871/2015 under Sections 377/323 IPC against her husband. Later the complainant made a complaint to CAW Cell on 14th March, 2016 on which the above noted FIR was registered on 9th April, 2016.

5. Before registration of the FIR but after filing of the complaint before

CAW Cell on 2nd April, 2016, the petitioner herein filed an anticipatory bail application before the learned Additional Sessions Judge who dismissed the same on the ground that no FIR had been registered however, passed two directions, firstly that in the event of arrest five days notice will be given to the petitioner and that she will not leave the country without prior permission of the Court concerned.

6. Aggrieved by the condition that the petitioner will not leave the country without permission of the Court concerned, the petitioner filed an application for permission to go abroad before the learned Additional Sessions Judge which was disposed of as under:

“These are two applications moved on behalf of applicants Ujjwal Datta and Sangeeta Datta, who happen to be father in law and mother in law respectively, Neha who was married to Sumit on 04/06/2014.

The applicants were earlier granted protection by this Court vide order dated 02/04/2016 so far as matrimonial dispute is concerned. One of the condition of the protection was that the applicant shall not leave the jurisdiction of the Court without its prior permission. The aforesaid condition pertained to permission of concerned court, as on today it has been informed to this Hon’ble Court two FIRs have been registered, one against the husband and another against the relatives of the husband. Let this contentious fact be addressed before the concerned court for obtaining permission where Ld. Counsel for Complainant shall also have right to address the arguments.

Both the applications stand disposed of accordingly.

IO is directed to supply the copy of FIR to Ld. Counsel Sh. Ritesh Oberoi today itself.

Dasti be given as prayed for.”

7. On 2nd May, 2016, the petitioner, who is an Australian citizen, left the country. Thus the complainant filed a contempt petition before this Court being Contempt Case (C) No. 1126/2016 which was disposed of vide order dated 7th October, 2016 noting that the complainant has a right to seek recalling of the order.

8. The complainant also filed an application under Section 439 (2) Cr.P.C. for recalling protection order dated 2nd April, 2016, which application has not been disposed of and is still pending.

9. In the meantime, on 21st December, 2016, the Investigating Officer, took permission for arrest of the petitioner from the competent authority and on 30th December, 2016 served notice on the petitioner. This service of notice on the petitioner of five days prior to the arrest is bone of contention between the parties.

10. Learned counsel for the petitioner states that knowing fully well that the petitioner was at that moment residing in Australia, no notice was served to her at Australia, whereas the contention of learned APP for the State is that since the address of Delhi, that is, 6/8, Tialk Nagar, Delhi was also the local address of the petitioner, the notice was pasted over there as the petitioner was not available.

11. A perusal of the bail application on which the order dated 2nd April, 2016 was passed by the learned Additional Sessions Judge notices that the petitioner herself gave her address both of Melbourne, Australia as well as house No.6/8, Tilak Nagar, Delhi. Thus prima facie it cannot be held that pasting of notice at the address 6/8, Tilak Nagar by the police officer was an

illegality and non-compliance of the order dated 2nd April, 2016 passed by the learned Additional Sessions Judge.

12. Armed with the permission to arrest and having pasted the five days notice of arrest on 30th December, 2016 when the petitioner came to Delhi and landed at the IGI Airport on 26th February, 2017, she was arrested by the Investigating Officer and was taken to custody. Her bail application was dismissed by the learned Trial Court vide order dated 27th February, 2017 and then by the learned Additional Sessions Judge vide order dated 8th March, 2017. Hence the present petition.

13. When this petition came up before this Court, notice was issued to the State and on 29th March, 2017, this Court granted interim bail to the petitioner till the next date of hearing on the petitioner furnishing a personal bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of learned Trial Court, further subject to condition that the petitioner will not leave the country in the meantime. It was further stated that in the meantime, the son of the petitioner Sumit Datta would also come to India.

14. On the next, i.e. 11th April, 2017 when the petitioner was present in Court after being released on interim bail, she stated that to show her bona-fide she was willing to deposit a sum of ₹2.50 lakhs with the Registrar General of this Court within one week and in case LOCs against her son in both the FIRs were stayed, the son of the petitioner would come to India within two weeks.

15. On 18th April, 2017 it was informed that a FDR of ₹2.50 lakhs has been prepared and would be deposited in the course of the day and parties prayed for a negotiated settlement. Further as it appeared that the son of the

petitioner was not in her control, this Court did not stay the LOC in the two cases and Sumit Datta has not come to India.

16. Thus the issue in the present petition is whether the petitioner should be granted regular bail pending trial in the above noted FIR or not.

17. As noted above the allegations against the petitioner are twofold, that is, of misrepresentation at the time of marriage about the affluence of her son and secondly, breach of trust that is all the dowry articles which were entrusted to her were not returned. At the same time, it has also been stated in the FIR that when the husband of the complainant tried to enter into the house at Australia in drunken condition, the petitioner did not permit him to enter so as to evade any assault on the complainant and when he assaulted the complainant, daughter of the petitioner made a call to the police. The petitioner has been in custody for more than 4 weeks.

18. Learned APP for the State on instructions from the Investigating Officer fairly states that despite custodial investigation no recovery could be made from the petitioner. To show her bona fide the petitioner has already deposited a sum of ₹2.5 lakhs in FDR with the Registrar General of this Court.

19. Considering the fact that the petitioner has been in custody for more than four weeks, has shown her bona fides and in view of the allegations against the petitioner, this Court deems it fit to grant bail to the petitioner.

20. It is, therefore, directed that the petitioner be released on bail on her furnishing a personal bond in the sum of ₹50,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court/court concerned, further subject to the condition that she will not leave the country without prior permission of the court concerned and will intimate the place

of her stay to the Investigating Officer.

21. The amount of ₹2.50 lakhs deposited by the petitioner as FDR with the Registrar General of this Court will be subject to the final outcome of the trial or any negotiated settlement between the parties.

22. Petition is disposed of.

23. Order dasti.

MUKTA GUPTA, J.

MAY 08, 2017

‘vn’