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

+ CRL.M.C. 1321/2017

SAYRA BANO

..... Petitioner

Through: Mr.Atul Verma, Advocate.

versus

STATE & ANR.

..... Respondents

Through: Ms.Meenakshi Dahiya, APP for the
State/R-1 with SI Geeta Yadav, PS
Aman Vihar.

Mr.Neeraj Sharma, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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12.07.2017

1. The petitioner herein is the complainant in case FIR No.101/2017 under Sections 376/313/506 IPC, PS Aman Vihar.

2. By filing this Criminal Misc.(Mains), the petitioner is praying for cancellation of bail granted to respondent No.2/accused in the above noted FIR, for the following reasons:-

(i) The petitioner was married to Nizam Malik and is having two daughters. Her relationship with her husband Nizam Malik was not cordial.

(ii) The petitioner was introduced to respondent No.2/accused Ankit by her brother-in-law (jija) Gulam Rasool as his friend.

(iii) As per the FIR, her husband Nizam Malik was involved with some other lady. The respondent No.2/accused Ankit assured to help her and also marry her and take care of her daughters.

(iv) They started living together and the respondent No.2/accused Ankit was introduced in the locality as Ayan Malik.

(v) While in the relationship with respondent No.2/accused, twice the petitioner became pregnant and had to undergo abortion as the respondent No.2/accused assured to marry her after some time.

(vi) Thereafter the complainant refused to marry her and also stopped taking her phone calls and threatened that her photographs would be put on the internet.

(vii) She also handed over ₹50,000/- in old currency to respondent No.2/accused on 1st December, 2016 due to demonetisation for replacement with new currency but the replaced notes were not handed over by respondent No.2 to her.

3. Respondent No.2/accused Ankit applied for anticipatory bail vide Bail Appln.No.433/2017 which has been allowed by the learned ASJ vide order dated 3rd February, 2017. The order granting anticipatory bail is extracted hereunder:-

'03.02.2017

Present : Ms. Nimmi Sisodia, Addl. PP for the State.

Accused/applicant Ankit is present with counsel

Mr.Neeraj Sharma and Mr. Naveen Sharma.

Prosecutrix is present with her counsel Mr. A.S.Mann.

IO/PSI Geeta Yadav is present with the case file.

An application for anticipatory bail of accused/applicant Ankit is listed for today. Report on the same has already been filed by the IO.

Today a fresh report has been filed by the IO. She has submitted that the accused has joined the investigation in compliance to the order dated 01.02.2017.

POAs have been filed on behalf of the accused as well as the complainant.

The counsel for the accused has filed a copy of FIR No.347 of 2015, PS Sultanpuri and a copy of "Samjhota Nama" dated 14.01.2017 between the prosecutrix and the accused.

Arguments on the anticipatory bail application of accused have been heard at length. Material on record, relevant provisions of law and the precedents on the point have been perused.

Counsel for the accused has submitted that the accused is attending his offence and is very much available. He has further submitted that the prosecutrix has filed a false case and is in a habit of filing such similar false cases. He has annexed copy of FIR No.460/15, u/s 376/506 IPC, PS Aman Vihar, which she had got registered against her brother in law (Jija) and has subsequently extorted money from him and settled the case. She has litigation with her husband from whom she is trying to extort money. She has also got FIR No. 347 of 2015, PS Sultan Puri registered which is u/s 341/352/506 IPC and she is trying to extort money from the accused therein. The charge sheets have already been filed in FIR No.460/15, u/s 376/506 IPC, PS Aman Vihar and FIR No. 347 of 2015, PS Sultan Puri registered, which is u/s 341/352/506 IPC. The record of the hospital, where the prosecutrix allegedly got the abortion done shows that she had disclosed her identity as wife of Mr. Aayan Malik. In the present FIR, she has mentioned the name of her husband as Mr. Nizam. She also wants to extort money from the accused. She has already taken Rs. 2 lacks from the accused on 14.01.2017 in terms of the settlement effected between them but now is trying to extort more money. Prayer for releasing the accused on anticipatory bail is made.

The Additional Public Prosecutor, assisted by the IO as well as counsel for the prosecutrix, has requested for dismissal of the application submitting that accused is involved in a very heinous case and should not be released on anticipatory bail. The prosecutrix after seeing the copy of "Samjhota Nama" has disputed her signatures on the same. She has admitted getting the two above mentioned FIRs

registered besides the present FIR. The “Samjhota Nama” has been denied by the prosecutrix but she has not denied that there was some settlement between her and the accused on 14.01.2017 and she had put her signatures on some blank papers.

The allegations levelled against the accused Ankit are that he has committed rape upon the prosecutrix on the pretext of marriage and has also taken Rs.50,000/- from her for changing the currency notes after the demonetization dated 08.11.2016. He has also caused her miscarriage without her consent.

On perusal of the FIR registered on 24.01.2017, it transpires that the prosecutrix has mentioned that about two years earlier she had met accused Ankit who was friend of her brother in law (Jija) Mr. Gulam Rasool. The accused had given his mobile number and had told her that he would help her as her husband was involved with another woman. Accused had come to her house and told her that he would live with her, look after her children and marry her and had forcibly established physical relations with her. He continued to assure her of marriage and continue to have physical relations with her up till 13.09.2016 when she came to know that she is pregnant. When she told the accused about her pregnancy, she got the abortion done on 15.09.2016 at Rathi Hospital, Nangloi, where he had got her admitted and then left from there. On 01.12.2016 she had given him Rs.50,000/- for exchanging the currency notes. The accused has refused to return her money, fights with her and had threatened her that he would make her video or photographs public (viral).

The IO has submitted that she has already obtained the medical records of the prosecutrix and has recorded the statement of the doctor at Rathi Hospital. Form 3- Form of consent shows that the name of the husband of the patient i.e. the prosecutrix herein is mentioned as Aayan Malik and the prosecutrix has signed the consent form.

It is also clear from the FIR itself as well as the other

statements and records of the prosecutrix that she is already married and in such a situation, it is further clear that she herself was not in a capacity to marry again during the substance of her marriage. If she had physical relations with the accused and continue to have them with two years despite herself being married, the alleged assurance of marriage given by the accused to her can not be used against him. The medical records especially the consent form shows that the prosecutrix herself has got the MTP conducted. The prosecutrix has not denied that there was some settlement between her and the accused on 14.01.2017 and she had put her signatures on some blank papers.

A strange fact which is also revealed that Mr. Gulam Rasool, brother in law of the prosecutrix, who is the accused in the FIR No.460/15, u/s 376/506 IPC, PS Aman Vihar is a witness in the present case i.e. FIR No. 101/16, PS Aman Vihar, has given his statement in favour of the prosecutrix and he has also furnished his bond to give evidence in this case.

Considering the facts and circumstances of the case as well as the fact that the accused has already joined the investigation, accused/applicant Ankit is hereby granted anticipatory bail on furnishing bail bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned SHO/IO. The accused shall not leave the station without prior permission of the concerned SHO/IO. He shall not contact the prosecutrix/complainant in any manner, directly or indirectly. He shall not tamper with the evidence in any manner. He shall join the investigation as and when required by the IO.

Application for anticipatory bail of accused Ankit is accordingly allowed.

Nothing said herein shall be considered as an expression of opinion and shall have any bearing on the merits of the case.

Copies of the order be given to the Additional Public Prosecutor, counsel for the accused/applicant, counsel for prosecutrix as well as to the IO, as requested.

Copy of the order be sent to the concerned SHO/IO, for information and compliance.

*Sd/-
Special Judge (NDPS) N-W, ASJ,
Rohini Courts, Delhi.03.02.2017'*

4. In the case Rohit Chauhan vs. State, NCT of Delhi 200 (2013) DLT 385, while granting anticipatory bail to the accused in a case registered under Section 328/376/506 IPC, the Co-ordinate Bench of this Court made the following observations:-

'Undoubtedly there is a manifold increase in the crime concerning rapes, but all the rape cases which are filed have their own individual story and factual matrix. While most of the cases may be genuine, wherein the girl is a victim of this horrifying crime, or has been forced, blackmailed, threatened to enter into physical relationship with a male on the false pretext of marriage with the sole intent to physically exploit the girl but there may be cases where both persons out of their own will and choice, develop a physical relationship. Many of the cases are being reported by those women who have consensual physical relationship with a man but when the relationship breaks due to one or the other reason, the women use the law as a weapon for vengeance and personal vendetta to extort money and sometimes even to force the boy to get married to her. Out of anger and frustration, they tend to convert such consensual sex as an incident of rape, defeating the very purpose of the provision. There is a clear demarcation between rape and consensual sex and in cases where such controversies are involved, the Court must very cautiously examine the intentions of both the individuals involved and to check if even the girl on the other hand is genuine or had malafide motives. Cases like these not only make mockery of the sacred institution of marriage but also inflate the statistics of rape cases which further deprecates our own society.'

5. In the instant case, the learned ASJ while granting anticipatory bail to respondent No.2/accused has given valid reasons like; registration of FIR No.460/2015 under Section 376/506 IPC, PS Aman Vihar by the petitioner against her *jija* Gulam Rasool and subsequent settlement after having money from him; registration of another FIR No.347/2015 under Sections 341/353/506 IPC PS Sultan Puri and her attempts to extort money. Even in this case, entering into a settlement on 14th January, 2017, on which she is not disputing her signature and receiving money under the said settlement, the complainant herself is a married lady and had not obtained divorce from her husband Nizam Malik so there was no question of giving consent under the misconception of promise to marry her by respondent No.2/accused.

6. Since respondent No.2/accused Ankit has not misused his liberty and the fact that the petitioner herself was a married woman having two daughter while allegedly living with respondent No.2, in the medical record pertaining to medical termination of pregnancy referred to her husband as Aayan Malik though she was married to Nazim Malik, I do not find any ground to cancel the bail of the respondent No.2/accused Ankit granted vide order dated 3rd February, 2017.

7. The petition is hereby dismissed.

PRATIBHA RANI, J.

JULY 12, 2017
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