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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: 20th April 2017

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BAIL APPLN. 680/2017

KAMAL HASAN

..... Petitioner

Through: Mr. Manoj Ohri, Senior Advocate
with Mr. M.K. Perwez,
Mr. Abhimanyu Singh, Advocates

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Inspector Rajesh Kumar, Sub-
Inspector Pooja Kumari, Police
Station Ranhola, Delhi

CORAM:

HON'BLE MR. JUSTICE P.S. TEJI

ORDER

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P.S. TEJI, J. (Oral)

1. By this second application filed under Section 438 of Cr. P.C., the petitioner seeks anticipatory bail in FIR No. 146/2017 under Section 363/376/506 of Indian Penal Code read with Section 6 of POCSO Act, registered at Police Station Ranhola, Delhi.

2. The case in hand was initially registered under Section 363 of IPC on the statement of father of the prosecutrix and the prosecutrix was of 16 years of age and the petitioner was specifically named in

the FIR. Statement of the prosecutrix under Section 164 of Cr. P.C. was recorded on 22.03.2017. However in her second statement under Section 164 of Cr. P.C. dated 01.04.2017, it was recorded that the earlier statement given by her was due to the influence of the petitioner and she further stated that she was also shown a gun by the petitioner and was tutored by the petitioner, and thus she could not depose about the true facts before the learned Metropolitan Magistrate, who had recorded her statement under Section 164 of Cr. P.C. on 22.03.2017. In her second statement dated 01.04.2017 she had alleged that she was dragged in a car after being held by her hair, she was given slap blows and her mouth was tied with cloth. Thereafter she was taken to a house and kept there for the entire night. The petitioner forcibly developed physical relations with her three times and threatened the prosecutrix that if she would not depose in his favour, he would kill her entire family and he had also shown video of the prosecutrix and threatened her with uploading the same on net.

3. Learned senior counsel appearing on behalf of the petitioner contended that during the course of investigation, the father of the petitioner was lifted from his house and tortured therein to produce the petitioner and the petitioner in fact surrendered himself before the Investigating Officer and had already joined the investigation in the evening of 21.03.2017. Thereafter, the prosecutrix was interrogated by the Investigating Officer, who stated that she had gone on her own to her friend's house residing in the same vicinity without informing her parents and stayed there overnight. She also denied being

accompanied by her parents apprehending beating and torture on their part. Therefore, the Investigating Officer of the case took her to Nari Niketan Nirmal Chhaya at Hari Nagar, Delhi on 21.03.2017. The prosecutrix reiterated her statement before the learned Metropolitan Magistrate under Section 164 of Cr. P.C. and the petitioner was let free from the police station with direction to appear as and when required by Investigating Officer/court. Regarding medical examination of the prosecutrix, it is contended that the prosecutrix at the first instance had refused to be medically examined on 21.03.2017, however, later on 31.03.2017 she was medically examined as per the instructions of her parents. While recording the second statement under Section 164 of Cr. P.C. the prosecutrix has twisted and fabricated the facts and only thereafter, section 376 of IPC and Section 6 of the POCSO Act was added in the present case. Thereafter, the petitioner had applied for anticipatory bail before the learned Additional Sessions Judge, which was rejected vide order dated 07.04.2017. At last, learned senior counsel for the petitioner has contended that he has instructions to state that the petitioner is ready to join the investigation as and when directed by the Investigating Officer, therefore, the petitioner be granted anticipatory bail in the present case.

4. Learned Additional Public Prosecutor for the State filed the status report and vehemently opposed the aforesaid contentions of the petitioner. It is contended on behalf of the State that the petitioner has committed a grave offence of kidnapping a minor girl of 16 years of

age and raped the complainant and also prepared obscene videos of her. State has sought custodial interrogation of the petitioner to recover the car used in the incident as well as the gun shown to the victim.

5. I have heard the submissions made on behalf of both the sides and also gone through the contents of the petition and the record of this case.

6. In the first place, it is necessary to observe that in the present proceedings, this Court is not concerned about the feasibility of the allegations of the offence punishable under Section 376 Indian Penal Code or merit thereof but on the grant of anticipatory bail to the petitioner. Therefore, the submissions on behalf of the petitioner attempting to find loopholes and weakness in the prosecution case, contradictions in the two statements of the prosecutrix recorded under Section 164 of Cr. P.C., on two different dates, would not be of much relevance to the issue involved in the present case. In the considered opinion of this Court, at this stage, it cannot be said as to whether there was any physical relationship between the petitioner and the complainant and, if so, whether it was consensual. The fact remains that there are specific allegations of rape against the petitioner. It would ultimately be for the trial court to arrive at the findings as to whether such an allegation stands proved or not, on the basis of evidence that would be produced by the prosecution in support of its case. With these preliminary remarks, I advert to the core issue, namely, whether in the circumstances of this case, petitioner is

entitled to anticipatory bail or not and whether the learned Additional Sessions Judge was justified in rejecting the anticipatory bail to the petitioner.

7. For granting anticipatory bail to the person against whom the allegations of rape has been levelled, the factors that need to be taken into consideration, are; (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 possibility of the applicant to flee from justice; (c) The possibility of the accused's likelihood to repeat similar or other offences; (d) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; (e) 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; (f) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.

8. At this stage, learned Additional Public Prosecutor for the State has informed the court that the petitioner is a married person. The question for consideration before this Court is, whether a man knowing that he is married, could be permitted for such type of 'enjoyment' by spoiling the life of unmarried minor girl? This Court

is of the considered opinion that once an unmarried minor girl is subjected to such ill-treatment, particularly when she levels allegations which are the subject matter of legal proceedings, virtually stigmatic to the prosecutrix, where the plea generally taken by the accused is that it was with the consent of the prosecutrix though he had a married wife at his residence. In such a situation, he is not entitled for any concession on this pretext. Apparently, the fact involved in the present case does not merely constitute a legal offence but is also an immoral offence, on the ground that he is acting in a deceitful manner as he has a legal wife at home and still indulging in playing with an unmarried minor girl outside his house which ultimately could ruin her life. Such an act cannot be condoned as the same is not permissible lawfully, socially, morally and legally.

9. In view of the aforesaid settled principles and considering the facts and circumstances of the present case and the fact that the car as well as the gun used in the alleged offence are to be recovered; the fact that the investigation is at preliminary stage; and while perusing the allegations levelled against the petitioner, and considering the gravity of offence and the nature, this Court is not inclined to grant anticipatory bail to the petitioner in this case.

10. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

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

12. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

P.S.TEJI, J

APRIL 20, 2017
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