

\$~5

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

+ **BAIL APPLN. 1158/2017**

**SACHIN JAIN**

..... Petitioner

Through **Mr. R.M.Sinha with Mr. Prateek  
M.Sinha, Advocates**

versus

**STATE & ANR**

..... Respondents

Through **Ms. Manjeet Arya, APP for State with  
SI Amit Kumar, P.S.Farsh Bazar  
Ms. Gayatri Puri, Advocate for  
complainant**

**CORAM:**

**JUSTICE S.MURALIDHAR**

**ORDER**

% **15.06.2017**

**Crl.M.A.No. 9999/2017 (Exemption)**

1. Allowed, subject to all just exceptions.

**Bail Appln. No. 1158/2017 & Crl.M.A.No. 9998/2017**

2. This is a petition seeking anticipatory bail in FIR No. 76/2017 under Section 376 IPC registered at P.S. Farsh Bazar. The Petitioner has approached this Court after the dismissal by the learned Additional Sessions Judge of the Petitioner's anticipatory bail application on 1<sup>st</sup> June, 2017.

3. The Petitioner and the Complainant got married on 20<sup>th</sup> January, 2015 in India. They left from New York (USA) on 10<sup>th</sup> February, 2015. According to the Petitioner, the dispute between the couple arose sometime in October, 2015.

4. The Petitioner states that he filed the complaint for divorce in the Court in USA against the Complainant on 30<sup>th</sup> November, 2015 and summons for the complaint of divorce was served on the complainant on 1<sup>st</sup> December, 2015.

5. On this aspect, the case of the Complainant as contained in the first FIR No. 318/2016 dated 23<sup>rd</sup> July, 2016 (under Sections 498A and 406 IPC) is that when she left the USA on 1<sup>st</sup> December, 2015 “some divorce papers from the family court.....” were handed over to her simultaneous with the flight ticket.

6. It appears that thereafter on 20<sup>th</sup> January, 2016, the Superior Court of New Jersey Chancery Division –Family Part Hudson County, granted an *ex parte* divorce in favour of the Petitioner dissolving his marriage with the Complainant. The case of the Complainant is that she was made aware of the grant of the aforementioned *ex parte* divorce only much later.

7. The admitted case is that on 5<sup>th</sup> March, 2016 the complainant wife lodged a complaint against the petitioner in the Crime Against Women (CAW) Cell, East District, Delhi and proceedings took place in the CAW Cell from then on till 6<sup>th</sup> April, 2016. It is also admitted that the Petitioner and his parents participated in the said proceedings in the CAW Cell. The Court has been shown copies of the proceedings recorded at the CAW Cell. It *inter alia* contains a letter dated 26<sup>th</sup> March, 2016 written by the Petitioner addressed to the Deputy Commissioner of Police on the subject of “reconciliation of differences between me and my spouse” in which it is stated that as per the suggestion of the sub-Inspector Raj Kumar the Petitioner was “looking

forward for the following solution to arrive at an amicable resolution of the case filed by my spouse Tripti Garg.” One of the solutions suggested was that the Complainant should spend some time with the Petitioner’s family in Delhi "before looking forward to come back to USA”.

8. It is the case of the Complainant that thereafter it was the father of the Petitioner who arranged for her air ticket to return to USA. Counsel for the Complainant has drawn attention of the Court the noting in the CAW proceedings dated 6<sup>th</sup> April, 2016 by SI Raj Kumar that Mr. R.C.Jain, the Petitioner’s father, informed him that he had dropped the Complainant at the airport for taking a flight to the USA.

9. Mr R.M. Sinha, learned counsel for the Petitioner, submitted that the Complainant was already aware of the *ex parte* divorce granted even while she, of her own, took a flight to the USA on 6<sup>th</sup> April, 2016. When asked to substantiate this, Mr. Sinha was unable to do so except referring to the first FIR No. 318/2016 dated 23<sup>rd</sup> July, 2016 which records that the Complainant stated that when she returned to Delhi on 1<sup>st</sup> December, 2015 she was handed “some divorce papers.”

10. It is apparent that the above 'divorce papers' given to the Complainant on 1st December 2015 could not have included the copy of the *ex parte* decree of divorce which even according to the Petitioner was passed subsequently on 20<sup>th</sup> January, 2016. The Complainant states that she became aware of it only during the second round of proceedings before the CAW when the Petitioner's father produced it. She thereafter gave a further complaint (lodged under DD Entry No. 27B on 20<sup>th</sup> August, 2016) stating *inter alia*

that the Petitioner had on 1st April 2016 induced her to live with him and fraudulently took her consent "being well aware of the fact...that he was no more my husband.." It was on the basis of this complaint that a second FIR No. 76 of 2017 was registered under Section 376 IPC on 25th February 2017. The circumstances under which the Petitioner again co-habited with the Complainant when she returned to USA on 6<sup>th</sup> April, 2016 and how she returned to India thereafter and revived the CAW proceedings have been detailed in the above FIR 76/2017 in which the Petitioner now seeks anticipatory bail.

11. The Court has been shown a copy of the attendance sheet in the second round of CAW proceedings which were held on 29<sup>th</sup> June 2016, 9<sup>th</sup> July 2016 and 5<sup>th</sup> August, 2016. It reveals the participation of the father and uncle of the Petitioner in the proceedings on 9th July 2016.

12. In the order dated 1st June 2017 dismissing the Petitioner's application for anticipatory bail the learned ASJ noted that the Complainant's statement has been recorded under Section 164 Cr PC. After analysing both FIRs and her statement under Section 164 Cr PC, the learned ASJ came to the conclusion that the Complainant came to know of the *ex parte* decree of divorce granted by the Court in USA during the second round of the CAW proceedings.

13. Having perused those very documents and after having heard the submissions of Mr. Sinha, this Court is not persuaded to hold that the learned ASJ committed any error, legal or factual, in coming to the above *prima facie* conclusion. Mr. Sinha referred to the decision of Supreme

Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra AIR 2011 SC 312*, to urge “that a person seeking anticipatory bail is still a free man entitled to the presumption of innocence.” and that “in the event of there being some dispute as to the genuineness of the prosecution in the normal course of events, the accused is entitled to an order of bail.” While the above exposition of the legal position is unexceptionable, it is of no assistance to the Petitioner in the facts and circumstances of the present case. There is no merit in the repeated assertion of Mr Sinha that the Complainant did not state anything in first FIR No. 318 of 2016 registered on 23<sup>rd</sup> July, 2016 about the Petitioner inducing her to cohabit with him despite knowing about the ex parte divorce. The Complainant has been able to show *prima facie* that she became aware of that fact only around 5th August 2016 in the second round of the CAW proceedings when the Petitioner's father disclosed that fact for the first time. It was thereafter that she lodged DD No 27 B which led to the second FIR.

14. Mr. Sinha referred to Section 376-B of the IPC which talks of sexual inter course between husband and wife “during separation”. At the same time, Mr. Sinha was candid that this was not a case of sexual intercourse during 'judicial separation'. *Prima facie* it appears to be a case of sexual intercourse after grant of divorce by false inducement and fraudulent obtaining of consent of the former wife by her former husband.

15. The Court is satisfied that no case is made out by the Petitioner for grant of anticipatory bail in FIR 76 of 2017. The fact that a charge sheet has already been filed in the first FIR 318 of 2016 and that an LOC has been

issued against the Petitioner who is presently in the USA are additional factors that cannot be overlooked. The Petitioner is required for interrogation by the police in the second FIR 76 of 2017 and that FIR has to be fully investigated and taken to its logical conclusion.

16. The petition is dismissed. It is clarified that the observations in this order are of a *prima facie* nature based on the materials available at present and not intended to influence the orders that may be passed at the further stages of the case.

**S.MURALIDHAR, J.**  
**(Vacation Judge)**

**JUNE 15, 2017**  
mw