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

+ CRL.REV.P. 771/2016

ARUNA

..... Petitioner

Through: Mr.Rakesh Kumar & Ms.Anubha
Singh, Advocates

versus

STATE AND ANOTHER

..... Respondents

Through: Ms.Kusum Dhalla, APP for the State
with W/ASI Premlata PS Narela
Mr.Ravin Rao & Ms.Ashwani
Shaima, Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
20.07.2017

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1. The petitioner/complainant is aggrieved by the orders dated 1st June, 2016 whereby anticipatory bail has been granted to the respondent No.2/accused and order dated 13th October, 2016 whereby the application filed by the State seeking cancellation of bail of the respondent No.2/accused has been dismissed by the learned ASJ-04, North District, Rohini Court, Delhi.

2. Mr.Rakesh Kumar, learned counsel for the petitioner has submitted that the status report filed by the State shows that during investigation, the Investigating Officer wanted the custodial interrogation of respondent

No.2/accused to recover laptop, pen drive and the memory card from the accused in which the photos of the petitioner/complainant and her husband were allegedly kept. The respondent No.2/accused was absconding and not co-operating with the investigation despite that the anticipatory bail has been granted by the learned ASJ.

3. Learned counsel for the petitioner/complainant has also referred to the order dated 1st July, 2016 whereby the application under Section 438 CrPC seeking anticipatory bail was allowed by the learned ASJ on the basis of submission of the counsel for the accused at bar that applicant was not in possession of any laptop, computer or pen drive and that the allegations of having taken the photographs of the private part of the prosecutrix, have been made in order to settle personal score and to teach a lesson to him and his entire family. It has been contended that the custodial interrogation was required to recover all these devices.

4. Learned counsel for the petitioner/complainant has submitted that Annexure-P5 (page No.56) annexed with this petition is a complaint made by the petitioner to SHO, Police Station Kithore, Meerut, Uttar Pradesh informing that she had been threatened by the father and *Tau* (elder brother of father) respondent No.2/accused with dire consequences if the matter pertaining to rape is not settled and the case is withdrawn.

5. Learned counsel for the petitioner has also referred to the MLC of the prosecutrix/complainant wherein it is recorded that on general examination, a few (2-3) scratch marks were found present over left side of chest, left upper arm and right hand.

6. Mr.Ravin Rao, Advocate for the respondent No.2/accused has

submitted that the petitioner/complainant is having matrimonial dispute with her husband and in order to take revenge, this false case was got registered and that too after an inordinate delay. It has also been pointed that even as per the FIR, the first act of alleged eve teasing had taken place on 15th April, 2012 followed by a threat to kill her if she raised alarm. Thereafter in December, 2014 at about 11.00 pm she has claimed that the accused entered her room when she was sleeping and clicked the photographs of her private part after taking off her salwar. Thereafter he started blackmailing her. About 5-6 months ago (prior to date of registration of FIR) the accused committed rape on her at about 6.30 pm and threatened her not to disclose it to any person. Again she was allegedly raped on 13th May, 2016 at 6.30 pm. The FIR has been registered on 18th May, 2016 after due deliberation and even as per the MLC, no offence of rape could have been confirmed.

7. Ms.Kusum Dhalla, learned APP for the State has submitted that initially in the status report it was mentioned that custodial interrogation of the accused was required but thereafter he has co-operated with the investigation and his mobile was seized. He did not have any other electronic device containing alleged photograph. Learned APP for the State has submitted that the police report about threat alleged to have been made by the complainant at PS Kithore, Meerut, U.P. on verification was not found to have been received in that Police Station at U.P.

8. I have considered the submissions made on behalf of the parties and carefully gone through the record.

9. The respondent No.2/accused is cousin of husband of the complainant. The learned ASJ, while dealing with application seeking

anticipatory bail filed by the accused, has referred to the principles governing the discretion of grant of bail as laid down by the Supreme Court in the decisions reported as Gurbaksh Singh Sibbia vs. State of Punjab (1980) 2 SCC 565, Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors. (2011) 1 SCC 694, Bhadresh Bipin Bhai Sheth vs. State of Gujarat & Anr., (2016) 1 SCC 152 and decision of this Court in Jagdish Nautiyal vs. State in Bail Appln. No.1317/2012 decided on 29th November, 2012, Rohit Chauhan vs. State of NCT of Delhi in Bail Appln. 113/13 decided on 22nd May, 2013, Hari Mohan Sharma vs. State of NCT of Delhi in CrI.A. No.135/2014 decided on 7th January, 2016 and Sujit Ranjan vs. State in CrI.A.No.248/2010 decided on 27th January, 2011, and granted anticipatory bail vide order dated 1st June, 2016 for the following reasons:-

'As noted above, the perusal of statement u/s 164 Cr.P.C. of prosecutrix would show that she is an educated lady having signed her statement in English language. She was thus, expected to take care of the consequences of falling prey to the sexual desires if any of the applicant as alleged. In view of overall facts and circumstances of this case and the accusation made hereinabove as well as taking guidance from the observations made by Hon'ble High Court of Delhi in the above mentioned case. I am of the view that it is a fit case where applicant deserves to be granted concession of pre arrest bail as his custodial interrogation does not seem to be required at this age.

Accordingly it is hereby ordered that in the event of arrest, the applicant accused namely Aditya Swami shall be released on bail subject to furnishing personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of IO/SHO. The applicant is directed to join the investigation as and when so required. He is also directed not to approach the complainant and/or her family members directly or indirectly. Nothing mentioned herein shall

tantamount to expression of any opinion on merit of case. Application stands disposed of accordingly.'

10. The application filed by the State seeking cancellation of bail has been dismissed by the learned ASJ vide order dated 13th October, 2016 on the ground that nothing was brought on record to show that the accused has in any way violated the conditions of the bail or misused his liberty.

11. The claim of the complainant that she made a complaint at PS Kithore, Meerut, Uttar Pradesh, was also not found to be correct in the verification report submitted by the Investigating Officer. As per the report by the Investigating Officer, no such complaint was received by that police station in Meerut, U.P. Placing reliance on the decisions reported as Gurcharan Singh vs. State (Delhi Administratin) 1978 (1) SCC 118, Ramcharan vs. State of M.P. 2006 (1) SCC (Cri) 511, Dolat Ram vs. State of Haryana 1995 SCC (1) 349, the application seeking cancellation of bail has been dismissed for the following reasons:-

'Now adverting back to the facts of the present case. Although, it has been claimed on behalf of petitioner/State that father and uncle of non- applicant/accused had visited the house of prosecutrix and had extended threat to her as well as to her family members for compromise and written complaint was lodged with PS Kithore, Meerut, U.P., but when Court issued directions to submit report about the outcome of said written complaint, IO filed report dated 30.08.2016, wherein it is mentioned that on enquiry made from PS Kithore, it was found that no such complaint was received at said PS. The written report submitted by concerned police official of PS Kithore in this regard, was also annexed therewith. Thus, the said plea raised on behalf of State for seeking cancellation of bail granted to non-applicant/ accused, does not have any merit in it.

As regards the second ground of cancellation of bail that custodial interrogation of non-applicant/accused shall be required to recover electronic evidence in the form of laptop, computer, pen driver and e-mail identity containing objectionable photographs, the said submission was duly considered by the Court while granting anticipatory bail to the non-applicant/accused on 01.06.2016. Even otherwise, IO has submitted before the Court during the course of hearing that no independent witness has come forward during investigation till date in support of the allegation that non-applicant/accused had taken photographs of prosecutrix in objectionable condition. She also informed the Court that nothing of that sort was found available in the mobile phone of non-applicant/accused after its seizure and the said mobile phone has already been sent to FSL for examination by expert. It is also mentioned in the report filed by IO that non-applicant/accused has duly joined the investigation in this case.

After considering the facts of the present case on the touch stone of the law laid down by Hon'ble Apex Court regarding cancellation of bail, as mentioned hereinabove and in view of the reasons stated hereinbefore, I do not find any supervening circumstance or acceptable ground for cancellation of anticipatory bail granted to the non-applicant/accused. Consequently, the present application is hereby dismissed. Copy dasti.'

12. It is settled law that bail granted can be cancelled on the ground which has arisen after the bail was granted. The grounds for cancellation of bail and grounds for rejection of bail are two different circumstances hence the approach of the Court at two stages ought to be different. At the stage of application seeking cancellation of bail, the Court has to be more rigid in the sense that not only the possibility of violation but actual violation has also to be examined.

13. In the instant case, the petitioner could have sought cancellation of bail on the ground of threat being extended to her by father Sh.Bijender and *Tau* Sh.Jai Prakash of accused Aditya by visiting her house in Village Amarpur. Since the complaint was never received at the Police Station Kithore, Meerut, U.P., this ground was not available to the petitioner to seek cancellation of bail of accused Aditya on the ground of an attempt on his behalf to influence the witnesses or pressurise them to compound the offence and withdraw the case.

14. While granting bail, learned ASJ has noted that the accused Aditya is a First Year Student of Law in Delhi University. After noting the conduct of the prosecutrix from April, 2014 till May, 2016 i.e. over a period of two years, in the facts and circumstances of the case, the learned ASJ exercised the discretion by granting anticipatory bail to the accused. The application seeking cancellation of bail has been rejected by giving valid reasons.

15. The reasons given by learned ASJ while granting bail and thereafter for dismissing the application seeking cancellation of bail are based on appreciation of material on record.

16. The impugned orders do not require any interference by this Court in exercise of revisional power. The revision petition is dismissed.

PRATIBHA RANI, J.

JULY 20, 2017

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