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

\+ CRL.M.C. 323/2015 & Crl.M.A.1261-1262/2015, 4048/2015, 7843/2015, 4596/2015

RAJENDER SINGH ..... Petitioner

Through: Mr.Ramesh Gupta, Senior Advocate with Mr.Bharat Sharma, Advocate.

versus

STATE & ANR. ..... Respondents

Through: Mr.Ravi Nayak, APP for the State with Inspector R.P.Meena from PS-Kotla Mubarak Pur.
Mr.S.K.Rai and Mr.R.D.Rana, Advocates for the complainant/respondent no.2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% 26.07.2018

In the Sessions case presently pending trial arising out of FIR No.606/2014 registered on 19.07.2014 at the instance of second respondent (the complainant) allegations have been made against the petitioner (the accused) of he having committed offences punishable under Sections 376/506 of Indian Penal Code, 1860 (IPC).

The accused/petitioner had been granted anticipatory bail by the Additional Sessions Judge by order dated 05.11.2014 when the matter was still under initial probe. While the investigation was not yet complete, the complainant moved an application seeking cancellation of the said anticipatory bail order, *inter-alia*, on the grounds that she was being threatened, harassed and had been assaulted at the instance of the accused in order to pressurize her into withdrawing her case,

she narrating several incidents in this regard, including those allegedly having occurred on 11.08.2014, 12.09.2014, 24.09.2014 and 09.12.2014.

The Additional Sessions Judge made inquiry, *inter-alia*, by calling for a response from the accused and report from the police. On that basis, by his order dated 17.01.2015, he held that grounds had been made out for bail order to be cancelled.

The order cancelling the anticipatory bail order was challenged by the present petition under Section 482 Cr.P.C primarily on the submission that the allegations of threats or even about commission of offences attributed to him were false and concocted, it being a case where the complainant was trying to extract money demanded in the sum of Rs.20,00,000/- to put an end to the dispute.

The impugned order cancelling the bail was stayed by order dated 29.01.2015. The said interim order has continued to operate till date, it having been extended from time to time.

Meanwhile, the investigating agency completed the process of investigation. A report under Section 173 Cr.P.C was filed in the Court of Metropolitan Magistrate on 03.08.2015 on which the Magistrate took cognizance and issued process. Pursuant to the said order, the applicant appeared before the Court of cognizance on 28.08.2015. Since the petitioner had the benefit of the anticipatory bail order, the order cancelling the bail having been stayed by this Court by the order dated 29.01.2015, the presence was regulated by the Magistrate, and later by the Court of Sessions, in terms of the

earlier order of bail that has been in position ever since, the petitioner having been granted the extension of the interim protection from time to time by this Court.

It may be added that the case against the petitioner was committed for trial to the Court of Sessions by order dated 07.09.2015. The copy of the case details and some relevant ordersheets which have been submitted by the learned Senior Counsel for the petitioner pursuant to the direction by the last order reveal that the charge was framed against the petitioner on 07.04.2016. The case, thereafter, reached at the stage of prosecution evidence, it having been concluded on 02.05.2017. Pertinent to note here that the complainant also concededly appeared as a witness for the prosecution at that stage, she having deposed on the lines of her case set out in the FIR. The statement of the petitioner under Section 313 Cr.P.C was recorded on 02.06.2017. Thereafter, the petitioner led defence evidence. He examined himself, with the prior permission of the trial court, as a witness in his own defence.

Though the case had remained pending for the final arguments to be heard from 28.07.2017 till 05.01.2018 and final arguments were partly heard on two subsequent dates, it is pointed out that on the application of the complainant (to which the petitioner conceded fairly), he offered himself for further cross-examination which was also concluded in March, 2018. The case had again reached the stage of final arguments, it having remained pending, in the submission of the learned senior counsel for the petitioner, owing to one or other

application being filed by the complainant.

Coming back to the allegations on the basis of which the Court of Sessions found it to be a case where the anticipatory bail order should be cancelled, it is pointed out that incident of 11.08.2014 relates to three persons having come to the house of the complainant asking her to open the door, she making a call to Police Control Room, the intruders running away. There is nothing from which it could be inferred that the said intrusion, assuming the allegations are correct, included the petitioner or anyone connected to him.

The allegations pertaining to the threatening call received on 12.09.2014 are with reference to a particular mobile phone. The explanation of the petitoner is that the said mobile phone belongs to his son who had received a missed call and he had simply responded by making a call in return which is being wrongly perceived as a threatening call.

The incident of 24.09.2014 once again relates to a visit in the late hours of night by four unknown persons. The complainant apparently assumes that the unsolicited visit of such persons was at the instance of the petitioner.

The incident of 09.12.2014 relates to one in the chamber of an advocate by the name of Mr.Rana in Patiala House Courts complex which the complainant statedly visited, when she was assaulted by two persons who had entered there, one of them being Mr.O.P.Sharma, an advocate. This incident became the subject matter of inquiry by the local police which had recorded DD Nos.17A

and 21A. The record would show that the complainant had been taken to the hospital for medical examination but on the advice of medical officer, she was referred to Institute of Human Behaviour and the Allied Sciences (IHBAS) where she refused to go. It is the allegation of the complainant that this was an attempt to have her declared a lunatic. The inquiry by the local police, as the status report dated 22.04.2018 would show, included the recording of the statement of Mr.O.P.Sharma, Advocate. The matter arising out of the said DD entries was found to be groundless and, therefore, closed at the end of the local police. Pertinent to add here that the Additional Sessions Judge, in the impugned order, wrongly noted that Mr.O.P.Sharma, Advocate was not traceable. This reflects that the information on which the said order was passed was either not complete or it having been misread.

The complainant, however, had followed up the DD entry recorded on 09.12.2014 by moving an application in the Court of Magistrate under Section 156(3) Cr.P.C which having been disallowed, an inquiry nonetheless was held. But, the order passed on the said complaint is stated to have later been set aside by the Court of Sessions in revision, such order being a matter under challenge by a separate petition under Section 482 Cr.P.C pending in this Court.

The learned senior counsel for the applicant referred, *inter-alia*, to the proceedings recorded in the Court of Sessions on 19.07.2017 where the complainant had indulged in such conduct as cannot be condoned or approved of. She had entered the court room, according

to the explanation of her counsel, midway the proceedings of some other case, because she was being assaulted outside the court room, and being in need of protection. But, the proceeding recorded on 19.07.2017 would show that the improper conduct was indulged in during the proceedings in the Sessions case against the petitioner, the complainant having made an attempt to unauthorisedly video-record the court proceedings. She was stopped from doing so whereupon she having apologized, the Additional Sessions Judge did not press the matter for any further action.

In the aforementioned facts and circumstances, the impugned order cancelling the anticipatory bail cannot be approved of. It was an order passed more or conjectures and surmises**.** The order releasing the applicant on anticipatory bail could not have been recalled in a casual manner as was done. The said order cancelling bail is, thus, set aside.

As noted in the earlier part of this order, because of the confusion vis-a-vis the anticipatory bail order, the court of cognizance and trial court were constrained to regulate the presence of the petitoner in terms of the anticipatory bail order till date, the case having already reached the stage of final adjudication.

In these circumstances, it is directed that the bail order granted on 05.11.2014 shall be treated as an order releasing the petitioner on regular bail for purpose of the aforementioned case. His presence shall be, accordingly, regulated.

The petition and the pending applications filed therewith are

disposed of in above terms.

Trial Court Record be returned forthwith.

R.K.GAUBA, J.

JULY 26, 2018/ssc
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