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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1054/2018 & CRL.M.A. 8669/2018**

AFSANA @ NARGIS

..... Petitioner

Through: Mr. Gaurav Kochar, Mr. Nitin Arora,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, APP for State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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10.05.2018

In terms of the directions dated 08.05.2018, a status report has been submitted by the State.

Submissions have been made on behalf of the applicant on 08.05.2018 *inter alia* to the effect that the prosecutrix had made a statement that she has no grievance against the applicant and that there was a statement dated 04.11.2017 of the prosecutrix without any allegations against the applicant and that there were call details against the applicant which would show that the applicant was nowhere at Bijnor as has been sought to be stated in the statement of the prosecutrix under Section 164 of the Cr.P.C. and documents were sought to be filed by the applicant. The documents are indicated to have been submitted by the petitioner which are on the record.

The status report submitted under the signatures of the SHO, PS

Kalyanpuri dated 09.05.2018, *inter alia* states that the petitioner had produced an MOU signed by both the parties and that was for the purpose of verifying the signatures of the victim on the MOU, efforts were made to examine her but her house was found locked and she could not be examined. It was submitted when the matter was earlier taken up today on behalf of the petitioner that the prosecutrix was enroute and thus the matter was thus deferred to be taken up again.

The prosecutrix has now appeared and has been identified by the Investigating Officer, SI Khushboo, PS Kalyanpuri who has stated that the prosecutrix is aged about 20 years. Though, the prosecutrix presently has not been administered oath by the Court, the prosecutrix in reply to a specific court query has affirmed her signatures on the MOU executed between the parties and she further states that the applicant in the instant case who is the mother of Salman be granted bail.

On behalf of the applicant, it has been submitted that the applicant has been falsely implicated in the instant case. Reliance has been placed on behalf of the applicant on the statement of the prosecutrix put forth as an Iqrarnama on 04.11.2017 to contend that the applicant has been married of her own accord to Salman and that there was no coercion for the same and that she was responsible for what she was saying. *Inter alia* it has been submitted on behalf of the applicant that there were statements made by the prosecutrix and by her maternal grandfather before the Bijnor police wherein also there were no allegations levelled against the applicant. It has also been

submitted on behalf of the applicant that during the course of the proceedings on the bail application of the co-accused Shahrukh son of the applicant, the prosecutrix had stated that she had been married to Salman and that on 28.03.2018 the stated Shahrukh was granted bail in Bail Application no. 477/18 by the Court of the ASJ-05 East.

Reliance has also been placed on behalf of the applicant on an affidavit dated 04.11.2017 stated to be executed by the prosecutrix to contend that she had married Salman of her own accord. Reliance is also placed on behalf of the applicant on the statement made by the prosecutrix on 04.11.2017 to PS Kalyanpuri to the effect that her in-laws family was being threatened by her parental family and if there was anything that took place, her maternal uncles, Afzal and Afsar would be responsible and that there should be no danger to her spouse.

The prosecutrix who was present today when asked by the Court as to why she had come, stated that her *Nani*, i.e., her maternal grandmother be granted bail. The bail application of her maternal grandmother is listed as Sr.No. 27 for the day, i.e., Bail Application no. 1080/18. When queried by the Court in relation to the application of the applicant Afsana, she stated that she too be granted bail inasmuch as the matter has been settled between the parties.

On behalf of the State, the application is vehemently opposed submitting *inter alia* to the effect that the allegations levelled against the applicant are grave and serious in nature and that the prosecutrix

has corroborated the averments made in the FIR through her statement under Section 164 of the Cr.P.C. and that the applicant has a pivotal role to play in the commission of the offences against the prosecutrix of rape and also of the applicant having put a handkerchief on to the nose of the prosecutrix on 02.11.2017 when Salman who is a JCL (who is stated to have been released on bail) had informed her that the maternal grandfather had an accident and put her into a white Santro Car in which his mother, i.e., the applicant herein Afsana and his elder brother who were present and that the mother of Salman had put something onto her nose whereafter she had fallen unconscious and on 03.11.2017 when she woke up she found that she was at the house of Afsheen sister of Salman at Trilokpuri, 20 Block where the mother of Salman was also there (mother of Salman being the present applicant) and that the mother of Salman told the prosecutrix that the prosecutrix would have to marry Salman and that thereafter she was forcibly married to Salman in which marriage the maternal grandmother of Salman and his brother Shanu were also present. She also through her statement under Section 164 of the Cr.P.C. stated that she was taken to PS Kalyanpuri where she was made to give a false statement as she was threatened by Salman on each and every aspect with dire consequences for her family members who were threatened with threats to safety of their lives. She has also stated in her statement under Section 164 of the Cr.P.C. that Salman and his mother (the present applicant) and the

mother of Salman, his sister Afsheen and his brother Shanu thereafter had taken her to Bijnor where she was kept at Seeno Village and then taken to the paternal aunts house (i.e. Bua house) of Salman and that she had attempted to leave the house of the paternal aunt of Salman who did not let her go and that at that house, the co-accused Salman had raped her and repeatedly threatened her with dire consequences for her life and kept on beating her and that she was thus detained at her house and on 12.11.2017 she had reached home and informed her maternal aunt (i.e., Mami) about the same and informed another maternal aunt telephonically.

The FIR lodged on the complaint of the prosecutrix has similar averments. The CDR details that have been submitted on behalf of the State show the presence of the applicant at Bijnor from 12.11.2017. It has been contended on behalf of the applicant that since the presence of the applicant is not indicated to be there on 04.11.2017 at Bijnor, the falsity of the allegations against the applicant have been brought forth in toto, which is refuted on behalf of the State.

Without any observations on the merits or demerits of the case, merits or demerits of the veracity or otherwise of the allegations in the FIR, taking into account the statement of the prosecutrix in the FIR, the statement of the prosecutrix under Section 164 of the Cr.P.C. and also the averments made by the prosecutrix in the statement relied upon on behalf of the petitioner, i.e. the Iqarnama dated 04.11.2017 where she states of her marriage to Salman and thereafter states

“Hamare liy koi dusra raasta nahi hai” and taking into account also the statement of the prosecutrix which is stated to have been made to the police at Bijnor which states therein that she had called her maternal grandfather to come there and it was she who had telephonically informed her maternal grandfather and thereafter she of her own accord had gone with her maternal grandfather, presently the contention raised on behalf of the State that the settlement if any between the prosecutrix and the applicant and the family members of the applicant could be due to coercion cannot be overlooked.

Taking into account the gravity of the allegations made in the FIR and in the statement under Section 164 of the Cr.P.C. of the prosecutrix, there is no ground for grant of anticipatory bail. The application is declined.

ANU MALHOTRA, J

MAY 10, 2018
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