

\$~12

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

%

Judgment delivered on: 14.08.2018

+ **BAIL APPLN. 1545/2018**

BHUSHAN MALIK

..... Petitioner

versus

STATE (GOVERNMENT OF NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. V.Madhukar & Mr.Susheel Kumar, Advocates.

For the Respondent : Mr. Raghuvinder Varma, APP for State.
Mr. R.S.Jakhar & Mr. Neeraj, Advocates for
Complainant

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

14.08.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks regular bail in case FIR No. 46/2018 under Sections 376/506/328/354 IPC registered at P.S. Vasant Kunj. Subsequently, Sections 8, 12 & 14 of the POCSO Act have been added after a supplementary statement of the prosecutrix.

2. The allegations in the FIR are that the prosecutrix met the

petitioner at the marriage of one of the relations and was known to the petitioner since the year 2014. It is alleged that on 19.11.2016, the petitioner without her consent forcefully made physical relations with her. This is alleged to have been repeated in December, 2016 and further after extending threat he continued to make physical relations with her. Last time, it is contended that the physical relation was made on 20.11.2017.

3. Complaint was made to the police on 22.01.2018 and FIR was registered. In her statement recorded under Section 164 Cr.P.C on 23.01.2018, she has reiterated the allegations made in the FIR.

4. The petitioner applied for grant of the anticipatory bail on 27.01.2018 and in the application for bail, to show that the parties were known to each other for several years and there relations was cordial, petitioner relied upon conversations between them through electronic means *inter alia* Facebook Messenger. Learned counsel further submits that he filed the transcript of the conversations between the parties alongwith the application for grant of bail. Petitioner was granted interim protection by order dated 30.01.2018.

5. Subsequently a supplementary statement of the prosecutrix under Section 161 Cr.P.C. was recorded on 20.02.2018, wherein, it was alleged that the petitioner, in the year 2014 had given her Chocolate laced with some intoxicated material and on eating the same, she became unconscious. When she regained consciousness,

she was shown some obscene photographs of her. Learned counsel for the petitioner points out that even in the alleged incident of 2014, no physical relationship is stated to have been made by the petitioner.

6. Consequent to the supplementary statement under section 161 recorded on 20.02.2018, the application for anticipatory bail was rejected and the interim protection granted was vacated.

7. Learned counsel for the petitioner submits that there are substantial improvements in version given by the prosecutrix in the supplementary statement given by her on 20.02.2018 over the version given by her in the statement on which the subject FIR has been registered and the statement given before the Magistrate under Section 164 Cr.P.C. as also her version recorded in the *medico-legal examination of the sexual violence*. He further submits that when the petitioner sought to rely on the Facebook conversations between the parties to show that they were known to each other and their relation was cordial, improvements have been made in the statement recorded under Section 161 Cr.P.C to introduce the offences punishable under POCSO Act. It is submitted that the same led to the rejection of the anticipatory bail application.

8. The petitioner has been in custody since 6th April, 2018.

9. Learned counsel for the petitioner submits that there is no material to substantiate any of the allegations made either in the FIR

or in the statements recorded under Sections 164 and 161 Cr.P.C.

10. Further, it is contended that there is substantial unexplained delay in reporting the alleged incidents to the police as the allegation is that the incident pertains to 19th November, 2016 and lastly on 20th November, 2017 and the first complaint is made on 22nd January, 2018, after a delay of three months.

11. Learned counsel for the petitioner further submits that there is no other evidence to corroborate the commission of the offence apart from the statement of the prosecutrix in which also there are substantial improvements subsequently.

12. Learned counsel appearing for the prosecutrix submits that the prosecutrix was under threat and as such, she could not make a complaint to the police. Further, he submits that thereafter, one incident of petitioner and his family extending threats to the prosecutrix, has been reported, on which an FIR has been registered.

13. Learned counsel for the petitioner, on this, submits that the petitioner and his family members were called by the family of the prosecutrix for the purpose of discussions so that the matter could be amicably resolved. He further submits that the sister of the petitioner is married in the family of the prosecutrix.

14. Learned counsel for the petitioner submits that the mother of the prosecutrix is serving as a Head Constable in Haryana Police and

is well versed with the legal procedures and all the statements given by the prosecutrix to the police as also under Sections 164 and 161 Cr.P.C. have been recorded when her mother herself was present with the prosecutrix. It is contended by learned counsel for the petitioner that complaints about threats have been made only to create a false defence to the application of bail filed by the petitioner.

15. Learned counsel for the petitioner further contends that the petitioner is in custody since 06.04.2018. The petitioner is 23 years of age.

16. Learned APP for the State under instructions submits that the Mobile Phones of the complainant/prosecutrix as well as of the petitioner have been seized and have been sent for forensic examination. He further submits that the investigation on the complaints made by the prosecutrix with regard to threat extended by the petitioner is on.

17. Without commenting on the merits of the case and keeping in view the totality of the facts and circumstances of the case, I am of the view that the petitioner has made out a case for grant of bail.

18. Accordingly, petitioner is directed to be released on bail on his furnishing a personal bond of Rs. 25,000/- with two sureties of the like amount to the satisfaction of the trial court, if not required in any other case. The petitioner shall not do anything that may prejudice

either the investigation or the prosecution witnesses. The petitioner shall not leave the country without permission of the trial court. It is directed that the petitioner shall not contact the prosecutrix or her family members.

19. The SHO of the concerned Police Station of the residence of the prosecutrix is directed to ensure the safety of the prosecutrix.

20. The petition is disposed of in the above terms.

21. Order Dasti under signatures of the Court Master.

AUGUST 14, 2018

j

SANJEEV SACHDEVA, J