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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1894/2018

PAWAN SABHARWAL

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
Tarun Goomber, Mr. Dhananjaya Kaushal and Mr.
Mohit Bhandari, Advs.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Tarang Srivastava, APP for State
with SI Suruchi, P.S. Lajpat Nagar.

Ms. Aishwarya Rao, Adv. (DHCLSC) for
complainant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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10.10.2018

The petitioner was granted interim protection from arrest in terms of
the previous order, which recorded as under:

“It is the petitioner’s case that FIR No.202/2018 registered against him under sections 354/354(B)/376/506 IPC at Police Station Lajpat Nagar is false, frivolous and an endeavour by the complainant to harass and embarrass him, all because he being a part of the Residents Welfare Association (RWA), was assisting the Civic Authorities i.e. the Delhi Urban Shelter Improvement Board (DUSIB) and South Delhi Municipal Corporation (SDMC) in erecting a gate separating some residential and commercial areas of Lajpat Nagar, New Delhi, as well as in the laying down of roads in the vicinity. The learned Senior Counsel for the petitioner submits that the petitioner alongwith eight other office bearers of the RWA had complained to the police, specifically about the troublesome and obstructive conduct of the complainant on 27.03.2018. Earlier on 18.02.2018, they had intimated the police about the breaking of gates by some persons, which had been

installed by DUSIB behind the MCD Hospital. The allegation against the petitioner is of an incident at about 4:00 am on 01.04.2018. However, she made a complaint only on 19.04.2018, which was registered on 29.06.2018 on directions of the learned Chief Metropolitan Magistrate.

Mr. Uppal, the learned Senior Advocate for the petitioner states that the petitioner could barely walk with assistance, since he was recovering from a knee surgery done on 12.03.2018 and had consulted the doctor on 28.03.2018, therefore, it is unthinkable that the petitioner could accost the complainant in the wee hours of the morning despite her violent and protestations and insult her physically. He further submits that the complainant had earlier as well filed a similar complaint against another unsuspecting person on 02.10.2017, making similar wild allegations, because in that case, the alleged assault happened in the presence of her relatives – which was implausible. He submits that the petitioner is ready and willing to join the investigations as he has done earlier.

Issue notice.

Mr. Srivastava, the learned Additional Public Prosecutor accepts notice on behalf of the State. Status Report, if any, be filed before the next date.

Re-notify on 10.10.2018.

Let the petitioner report to the Investigating Officer as and when so called.

In view of the above, the petitioner shall not be arrested against the petitioner till the next date of hearing.

A copy of this order be given dasti to the learned counsel for the parties under signature of the Court Master.”

It is the petitioner's case that the complainant alleged an incident of rape by him at 4 am in the morning of 01.04.2018; she had made a PCR call,

the same morning, but the records of the said call do not reveal anything about the alleged sexual assault. A written complaint was made by her to the police by R-2 on 09.04.2018. This too did not mention the alleged sexual assault. Yet another complaint, dated 12.04.2018, which was posted to the police on 17.04.2018 and received by them on 21.04.2018, does not mention the aforesaid alleged assault. Indeed, the Status Report, filed on behalf of the police itself, indicates to the crucial lapse in intimating the police about the alleged assault under section 376 IPC. According to the Senior Advocate for the petitioner, this itself casts a serious doubt on the allegations and on the futility of continuance of charges under the said FIR. He submits that there is an ongoing dispute between the Resident Welfare Association (RWA) and the complainant, regarding parking of vehicles and her entry into the area of the RWA. He refers to complaints dated 08.02.2018 and 27.03.2018 filed against the complainant with the local police. He submits that the complainant had threatened the petitioner of initiating cases against him that would embroil him for a lifetime, in criminal proceedings. The RWA has submitted documents and CCTV recordings to the police.

The learned counsel for the State submits that the said material is being considered and if deemed appropriate, a supplementary Chargesheet may be filed before the Trial Court. He further states that the petitioner has joined investigations; the investigation is complete and a Charge-sheet has been filed.

In view of the above, the interim order is confirmed. It is directed that in the event of arrest of the petitioner in case being FIR No. 202/2018, U/S 354/354(B)/376/506/377 IPC, Police Station - Lajpat Nagar, he be released

on bail on his furnishing a personal bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of the Trial Court concerned, subject to the following conditions:-

- (i) the petitioner will regularly appear on each and every date of hearing to be fixed by the Trial Court concerned;
- (ii) the petitioner will not try to influence, contact or meet the complainant and prosecution witnesses in any manner;
- (iii) the petitioner will not leave the country without prior permission of the Court and the passport, if any, shall be deposited with the Trial Court concerned; and
- (iv) in case of change of his new address or contact number, the petitioner will promptly intimate to the SHO/IO of the case and intimate the Trial Court.

The learned counsel for the complainant states that the complainant is a single lady living with her three daughters and is feeling extremely harassed by the residents of L-Block, Lalpat Nagar, who park their vehicles in front of her house, often blocking her ingress and egress to her house.

Mr. Uppal, the learned Senior Advocate for the petitioner submits that the RWA members shall be sensitized about the complainant's difficulty and an endeavour shall be made to ensure that no cars of the members of the RWA or their guests are parked in front of the complainant's residence.

The learned counsel for the complainant submits that the complainant apprehends a threat to her life, limb and liberty by the petitioner and other members of the RWA. Mr. Uppal submits that all RWA members are peace loving citizens and there can be no threat from the members of the RWA.

The learned counsel for the respondent/complainant submits, upon instructions from the complainant who is present in the Court, that she too want to live peaceably in the neighbourhood.

However, in view of the apprehension expressed by the complainant, the local police shall assess the threat, if any, to her and accord her due protection, as may be, deemed appropriate. Therefore, the complainant shall be provided with telephone numbers of three police officers from the jurisdiction of the concerned Police Station of which one shall be of a lady police officer. These numbers shall be kept operational at all times so that any exigency can be intimated on either of the numbers by the complainant. Any message received on the said numbers or on any other telephone number of the police either by way of a telephone call or SMS shall be immediately responded to. Additionally, the Beat Constable/Division Staff of the area shall regularly visit the residence of the complainant on a daily basis and report the same in the *Roznamcha*. The safety and security of the complainant shall be assessed by the SHO on a weekly basis with due endorsement of the same in the *Roznamcha*. The Beat Constable shall record entries in his Beat Book.

The petition stands disposed-off in the above terms.

Nothing stated in this order shall be deemed to be an adjudication on the merits of the case.

A copy of this order be given dasti to the parties, under the signature of the Court Master.

NAJMI WAZIRI, J

OCTOBER 10, 2018/acm