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

+ BAIL APPLN. 395/2019
ABDUL HANNAN

..... Petitioner

Through: Mr. Tanmay Mehta, Mr. Vineet
Chadha and Mr. Ajay Kumar,
Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Panna Lal Sharma, APP
with SI Mukesh Tomar, PS
Daryaganj, Delhi

+ BAIL APPLN. 417/2019
MOHD. ADIL

..... Petitioner

Through: Mr. Tanmay Mehta, Mr. Vineet
Chadha and Mr. Ajay Kumar,
Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Panna Lal Sharma, APP
with SI Mukesh Tomar, PS
Daryaganj, Delhi

CORAM:**HON'BLE MR. JUSTICE CHANDER SHEKHAR****ORDER**

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15.05.2019

1. These applications have been filed under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for the grant of anticipatory bail to the petitioners in FIR No.225/2018 dated 4.9.2018, registered with the Police Station: Darya Ganj, under

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Sections 354/354-A/354-D/376/385/506/509/34 of the Indian Penal Code, 1860 (IPC).

2. The brief facts emanating from the case of the prosecution are that the FIR in the case has been registered on the basis of the complaint lodged by the prosecutrix wherein she has alleged that she befriended one Adnan Ashraf, co-accused in the year 2013. In the month of July, 2015, Adnan Ashraf invited her to a hotel for a party and there he intoxicated her and took obscene photographs of the prosecutrix to blackmail her in the future. Thereafter, Adnan Ashraf along with his two friends, namely, Abdul Hannan and Md. Adil ('petitioners', herein) sexually harassed/assaulted her on many occasions after blackmailing her on the basis of the above-mentioned photographs. It is further alleged that on 22.6.2016, the accused persons took her before a Maulana and there Adnan Ashraf married her after compelling her to do so in the presence of the petitioners. Further, in the month of November, 2016, Adnan Ashraf and the petitioners forcibly touched the prosecutrix inappropriately in a photo studio and tried to rape her but somehow she managed to escape.

3. The prosecution has filed the status report wherein it is stated that during the course of investigation, the statement of the prosecutrix under Section 164 Cr.P.C. was recorded by the Metropolitan Magistrate on 10.9.2018 in which, she supported the facts mentioned in the FIR of the present case and stated that the accused Adnan Ashraf had married her after putting her in fear, wherein his two friends Abdul Hannan and Md. Adil were witnesses. They had sexually harassed/assaulted her on many occasions.

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Thereafter, on 10.9.2018, Adnan Ashraf got arrested in the present case whereas the petitioners are absconding and against whom application for declaring them proclaimed offenders is already pending before the concerned Court.

4. It is perused that the first anticipatory bail application filed on behalf of the petitioner-Abdul Hannan before this Court was withdrawn vide order dated 17.12.2018 and the first anticipatory bail application filed on behalf of petitioner-Md. Adil before this Court was withdrawn vide order dated 19.12.2018 and these are the second anticipatory bail applications which have been moved before this Court by the petitioners.

5. Learned counsel for the petitioners submitted that the co-accused Adnan Ashraf after being in judicial custody for four months has already been granted bail by the Sessions Court vide order dated 17.1.2019 copy whereof is on the record.

6. It is also submitted by the learned counsel for the petitioners that the letters as well as the photographs placed on the record show that the complainant on her own will married the main accused and the rest of the allegations regarding the exploitation, etc. are false and frivolous which is also evident from the letters written by the complainant in the year 2016 and 2017.

7. *Per contra*, the learned APP for the State submitted that the charge-sheet has already been filed and the proceedings under Section 82 Cr.P.C. initiated against the petitioners are going on.

8. Anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where

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there is material on record to show that there is a possibility of false implication. However, when the element of criminality is involved; the custodial interrogation is required and/or the other aspects and facts are required to be unfolded in investigation, the applicant is not entitled for anticipatory bail.

9. It is also well-settled law that while considering the question of grant of anticipatory bail, the Court *prima facie* has to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its power to grant bail, the antecedents of the applicant and also the possibility of the applicant fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

10. In the matter of ***Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr.***, in Criminal Appeal No.416/2018, decided on 20.3.2018, the Supreme Court has held as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

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(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

11. Our own High Court in the matter of *Vivek Gaur v. Naresh Kumar Karotia & Ors.*, 2012(1) JCC 450 has held as under:

"12. The power of grant of anticipatory bail has been conferred by the Code of Criminal Procedure, concurrently, on the Sessions Court and the High Court. Normally, as a matter of fact, the practice which is prevalent in Delhi is that an accused is first relegated to file a petition before the Sessions Court and after having done so, if he is unable to get the requisite relief, he files a second anticipatory bail application before the High

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Court which is considered by way of judicial review, in as much as, it reconsiders not only the order passed by the learned Sessions Court but also independently assess the facts as to whether the accused person, in the given case, is entitled to grant of bail or not. Once these two opportunities are utilized by an accused and he is unsuccessful, ordinarily, the accused must submit to the processes of law. The law does not countenance that a person who fails to avail the protection of law files successive/repeated anticipatory bail applications, get them rejected and yet does not submit to the processes of law, and thereafter, sits on the fence observing the proceedings and then suddenly resurfaces after the charge sheet has been filed and applies to the Court for grant of anticipatory bail.

13. This is precisely what has happened in the instant case. The respondents anticipatory bail applications were rejected earlier three or four times after which they ought to have submitted to the processes of law. Normally, a person who seeks protection of law must submit to the processes of law. On the contrary, the respondents were declared proclaimed offenders after their anticipatory bail application having been rejected. Certainly, a person declared as a proclaimed offender may not be denied the benefit of anticipatory bail in all circumstances. A distinction has to be made where a person has been declared as a proclaimed offender without his knowledge and cases where a person knows about his being required by law enforcing agency yet tries to escape from the same by hook or by crook and then suddenly finds an opportune time to obtain an order to insulate his liberty. Such a benefit conferred on this kind of unscrupulous accused persons, in my view, is a dis-service to the law. I feel that the learned Additional Sessions Judge, in the instant case, by granting the benefit of anticipatory bail to the respondents, has not exercised his discretion judiciously and properly as they were declared as proclaimed offenders and their application for

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anticipatory bail had been rejected.”

12. I have gone through the material on record. The material on record, *prima-facie*, does not in any manner, reflect that the prosecution is inherently doubtful or there is a possibility of false implication. A perusal of the FIR also shows that the prosecutrix has specifically alleged the role of the petitioners vis-a-vis the blackmailing and sexual assaults. She has specifically named the petitioners in the complaint as well as in the statement under Section 164 Cr.P.C. The allegations against the petitioners are grave and serious in nature. In view of the allegations made in the FIR and the statement of the prosecutrix under Section 164 Cr.P.C., the custodial interrogation of the petitioners is essential. The petitioners have not co-operated in the investigation, rather they have fled from the justice.

13. Further, in the present case, the anticipatory bail applications of the petitioners have already been dismissed by the Sessions Court vide order dated 12.12.2018, and the anticipatory bail applications filed by the petitioners before this Court were dismissed as withdrawn on 17.12.2018 and 19.12.2018, respectively. In this case, the charge-sheet has already been filed and admittedly, the proceedings under Section 82 Cr.P.C. stands initiated by the Trial Court against the petitioners. The petitioners, who filed the anticipatory bail applications, invoking the jurisdiction of the Sessions Court and this Court under the provisions of law must himself/herself also follow the process of law. The petitioners ought to have, after the dismissal of their anticipatory bail applications by the Sessions Court on 12.12.2018 and/or when the anticipatory bail application before this

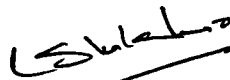
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Court, respectively, were withdrawn by them, ought to have, at least, surrendered to the process of law and joined the investigation. The filing of the present applications under Section 438 Cr.P.C. for the grant of anticipatory bail to the petitioners is a misuse of the process of law in light of the aforesaid circumstances.

14. The arguments advanced by the learned counsel for the petitioners do not convince this Court, in any manner, to grant anticipatory bail to the petitioners more so in view of the allegations made in the FIR, the statement of the prosecutrix under Section 164 Cr.P.C. and the material on record as also in view of the conduct of the petitioners as discussed hereinabove.

15. In view of the aforesaid discussions, facts and circumstances of the case, this Court does not find any merit in the anticipatory bail applications of the petitioners. Accordingly, the anticipatory bail applications are dismissed.

16. It is clarified that whatever is discussed or observed hereinabove is only a *prima facie* view of this Court, at this stage, and the same shall not tantamount to any expression or opinion on the merits of the case.


CHANDER SHEKHAR, J

MAY 15, 2019/rk