

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

Date of Decision: 11.07.2019

IN THE MATTER OF:

+ BAIL APPLN. 1565/2019 and CRL.M.(BAIL) 1115/2019

DEEPIKA GUPTA

..... Petitioner

Through: Mr. Amit Sharma, Mr. Madhukar Pandey, Mr. Anirudh Mishra, Mr. Umesh Kumar Singh, Mr. Shubham Sharma, Mr. Pranesh Misra and Ms. Damanjit Kaur, Advocates.

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State with SI Jyoti, PS Model Town.

Mr. Manish S., Mr. Akhilesh Kumar, Mr. Rahul Gupta, Advocate for complainant with complainant in person.

+ BAIL APPLN. 1566/2019 and CRL.M.(BAIL) 1116/2019

SANJAY GUPTA

..... Petitioner

Through: Mr. Amit Sharma, Mr. Madhukar Pandey, Mr. Anirudh Mishra, Mr. Umesh Kumar Singh, Mr. Shubham Sharma, Mr. Pranesh Misra and Ms. Damanjit Kaur, Advocates.

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State with SI Jyoti, PS Model Town.

Mr. Manish S., Mr. Akhilesh Kumar, Mr. Rahul Gupta, Advocate for complainant with complainant in person.

+ BAIL APPLN. 1567/2019 and CRL.M.(BAIL) 1117/2019

GAUTAM SURAJGARHIA

..... Petitioner

Through: Mr. Amit Sharma, Mr. Madhukar Pandey, Mr. Anirudh Mishra, Mr. Umesh Kumar Singh, Mr. Shubham Sharma, Mr. Pranesh Misra and Ms. Damanjit Kaur, Advocates.

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State with SI Jyoti, PS Model Town.

Mr. Manish S., Mr. Akhilesh Kumar, Mr. Rahul Gupta, Advocate for complainant with complainant in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present applications, the petitioners are seeking anticipatory bail in FIR No.570/2017 registered under Sections 376D/506/34 IPC at P.S. Model Town, North West District, Delhi.
2. As the bail applications filed by the petitioners before the ASJ, North: Rohini Courts, Delhi, were disposed of vide a common order dated 31.05.2019, the applications are taken up for hearing and disposed of vide this common order.
3. It is noted that in so far as Deepika Gupta is concerned, the charge-sheet was filed under Section 506/34 IPC whereas against Sanjay Gupta

and Gautam Surajgarhia, the charge-sheet was filed under Sections 376D/506/34 IPC.

4. Learned counsel for the petitioners submits that the charge-sheet in the present case has been filed against the petitioners while keeping them in Column 11 of the charge-sheet, i.e., the charge-sheet was filed “*without arrest*” and only when the petitioners were summoned, their applications seeking bail were rejected by the impugned order. Learned counsel for the petitioners, in support of his submissions, has placed reliance on :- (i) Criminal Reference No.4 of 2017 titled as Court on Its Own Motion v. State reported as **243 (2017) DLT 373**; (ii) Criminal Reference No.1 of 2018 titled as Court on Its Own Motion v. State reported as **254 (2018) DLT 641** and (iii) Dataram Singh v. State of Uttar Pradesh and Another reported as **(2018) 3 SCC 22**.

5. Learned counsel for the petitioners submits that as per the allegations in the FIR, although the alleged date of incident is the intervening night of 12/13th November, 2016 but the FIR was registered after a delay of more than one year, i.e., on 22.12.2017. He further submits that as per the FIR, the complainant admitted that she was in Delhi 3/4 months prior to the lodging of the FIR at the house of one Mr. Verma, a lawyer by profession.

6. Learned counsel for the petitioners further submits that the present FIR is a counterblast to the complaint dated 23.09.2017 lodged by Sanjay Gupta which was registered as DD No.39B at P.S. Model Town against one NGO, i.e., “*Mission Azad Foundation*” and its founder Ranjit Kumar Rai.

7. Learned counsel for the petitioners submits that the complainant and one, Mohan were employed as “domestic help” in the house of Deepika Gupta and Sanjay Gupta for the last about 14 and 20 years respectively. Mohan, who was looking after Vijay Gupta (father of Sanjay Gupta), over the years, had gained his trust and was handling all of the transactions and valuables of Vijay Gupta. He further submits that the complainant and Mohan were hand in glove and just two days prior to the death of Vijay Gupta on 24.04.2016, both of them had jointly purchased the property bearing Khasra No.3/16, Nathupura, Burari, Delhi for Rs.4,50,000/- from one Sunil Kumar. He also submits that another property was purchased by Mohan from one Sonu on 02.02.2015 for Rs.16,40,000/-. The said property was purchased through Devender. He submits that as Sonu and Devender were aware about acts of theft committed by Mohan, Sonu informed Sanjay Gupta about the purchase of the property by Mohan. Learned counsel for the petitioners submits that as per the statement of Sonu filed alongwith the charge-sheet, Mohan had also projected the complainant as his wife.

8. Learned counsel for the petitioners further submits that Sanjay Gupta had received threats via Whatsapp messages as well as unsigned letters from the aforesaid NGO, namely, “Mission Azad Foundation”, run by one Ranjit Kumar Rai. On the basis of his complaint, an FIR No.0007/2018 dated 10.01.2018 had been registered under Sections 385/506/34 IPC against the above mentioned Ranjit Kumar Rai. He submits that Mr. Rai has been involved in many cases of extortion and threats. He thus submits that the complainant has levelled allegations at the behest of the above said Ranjit Kumar Rai. He submits that although

the petitioner claims to have shared details of incident with Mohan, however, Mohan could not be traced during the investigation.

9. Per contra, learned APP for the State has opposed the bail applications. She submits that although the charge-sheet was filed without arrest, learned MM vide order dated 20.02.2019 had directed to investigate the allegations of kidnapping of wife and children of Mohan as well as forceful withdrawal of money from the bank account of the complainant and Mohan. She submits that initially the case was registered at P.S. Model Town, however, after investigation, the charge-sheet was filed by the District Investigation Unit (DIU), North West.

10. Learned counsel for the complainant submits that the Police did not register the aforesaid FIR and the same was registered on account of directions issued in an application filed under Section 156(3) Cr.P.C. by the complainant. He further submits that investigations were not carried out properly as no CCTV footage from the bank was sought by the Investigating Officer immediately on the registration of the FIR. He also submits that the petitioners are influential persons and are likely to hamper the investigation and the trial.

11. In the Rejoinder, learned counsel for the petitioners submits that as per the charge-sheet, only a complaint was received by Dak in the Police Station and the complainant did not present herself initially. He further submits that no CCTV footage could have been obtained as the complaint itself was made after a delay of one year.

12. I have heard learned counsel for the parties. The issue of a charge-sheet filed without arrest of the accused person, came up for consideration in a reference made by Chief Metropolitan Magistrate, East District,

Karkardooma Court, Delhi under Section 395(2) Cr.P.C. which was answered by the Division Bench in Court on Its Own Motion (supra) in the following manner: -

*“5. The question of law referred for consideration of this Court by the learned Magistrate has been settled by a learned Single Judge of this Court in **Court on Its Own Motion v. Central Bureau of Investigation**, 109 (2004) DLT 494 = ILR 2004 (I) Del. 47. In fact, the reference order takes note of the said decision.*

6. Since there is an authoritative determination by this Court of the question raised by the learned Magistrate, in our view, there was no scope for making such a reference in the first place. In any event, we find ourselves in complete agreement with the view taken by the learned Single Judge in the aforesaid case. In this decision, the learned Single Judge, inter alia, observed.

19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of co-operation is provided by the accused to the Investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary.

Such an arrest may also be necessary if the concerned Investigating Officer or Officer-in-Charge of the Police Station thinks that presence of accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.

21. The liberty of a citizen is of paramount importance and a constitutional guarantee and cannot be incised and therefore the police or Investigating Agencies should not remain under the impression that in every cognizable and "non-bailable" offence they should invariably arrest the offender. Power to arrest is altogether different than the need for arrest. Unless a person is required for custodial interrogation and investigation cannot be completed without his arrest, arrest may be necessary. In case investigation can be completed without his arrest and he extends all kind of co-operation, he should not be arrested. No authority howsoever powerful or mighty can be allowed to deny a person his liberty as it hits at the very foundation of democratic structure. In this regard, I cannot resist the temptation of reproducing the observations made by the Supreme Court in Joginder Kumar v. State of U.P., 1994 (SLT Soft) 445=(1994) 4 SCC 260 which are very pithy and have force in law. These are as under:

No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection

of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

22. Because of the view taken by the Special Judge and return of the charge-sheet by forcing the CBI to arrest the accused which it otherwise never felt the necessity of arresting him even for the purpose of investigation, an apprehension of the accused being denied the benefit of bail in spite of offence being devoid of high magnitude and severe punishment this Court feels constrained to give certain directions based on the legal position and several judgments including those delivered by me recently {(i) Suresh V. Chaturvedi v. AES Control Pvt. Ltd., Crl. M. (M) 2970/2003 decided on 24th July, 2003, (ii) Pratap Singh Gaekwad v. State of NCT of Delhi, Crl. M. (M) 1848/2003 decided on 30th October, 2003, (iii) Sudhir Nathani v. Central Bureau of Investigation, Crl. M. (M) 2848/2003 decided on July 24th, 2003} to the police and the investigating agencies as well as to the Courts competent to take cognizance of the offence and try the accused for guidance and compliance. These are:

Directions to the Police/Investigating Agencies like CBI, etc.:

(1) Investigating Officer, be of police station or special agency like CBI shall not arrest any person accused of having committed a cognizable and non-bailable offence until it is very necessary for the purpose of investigation or custodial interrogation say for recovering incriminating

articles or weapons of offence or eliciting information as to his accomplices etc. or for any other purpose that may help in gathering evidence to prove his guilt.

(2) Arrest should always be avoided if the investigation can be completed even otherwise and the accused gives full co-operation in completing the investigation.

(3) Arrest may be necessary, if the offence alleged is of grave nature and prescribes severe punishment and there is a likelihood of an offender either absconding or not appearing on being summoned or his fleeing away from justice or judgment.

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Directions for Criminal Courts :

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(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.”

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13. While answering the above reference, it was further held:-

“9. The view taken by the learned Magistrate that in offences, whereof the sentence is beyond seven years, the investigating agency should necessarily arrest the accused and produce the accused in custody at the time of filing the charge-sheet under Section 173, Cr.P.C. before the Magistrate, has no basis and is contrary to the statutory scheme. In this regard, reference may be made to Sections 2(c), 41 (41(1) (b), 41(1) (b) (a), 157(1), 173(2) (e), 173(2) (f) & 173(2) (g) of the Code, which put the matter beyond any doubt that the investigating agency is not obliged to arrest the accused whenever a cognizable offence is registered. The discretion to arrest the accused has to be exercised by the investigating agency by applying the principles laid down in the Code itself.

*10. The aforesaid position has been reiterated by this Court in **Udit Raj Poonia v. State (Govt. of NCT of Delhi)**, 238 (2017) DLT 212=2017 SCC Online Del. 6997; as also in **Rajesh Dua v. State**, Bail Application No.778/2017 decided on 9.8.2017. Thus, the Metropolitan Magistrate cannot examine whether the discretion of the IO to arrest, or not to arrest the accused, has been properly exercised. He is only concerned with the charge-sheet, as filed. He may return the charge-sheet if he finds that the investigation is not complete, or the charge is not borne out from the evidence collected and filed with the charge-sheet. But he cannot return the same merely because the accused has not been arrested and produced in custody at the time of filing the charge-sheet.”*

14. The view was reiterated by the Division Bench in another reference bearing Criminal Reference No.1 of 2018 titled as Court on Its Own Motion v. State reported as **254 (2018) DLT 641, DB**, where it was further held as under :-

“40. The last question of law referred for our consideration is the following:

(E) Whether this Court can release the accused on bail charge-sheeted without arrest under Section 376, IPC or any other offence punishable with imprisonment of life or death in view of bar under Section 437 (1) (i) [sic 437 (i)] Cr.P.C.

In the light of our discussion, as aforesaid, the accused, who is charge-sheeted without arrest under Section 376, IPC or any other offence punishable with imprisonment for life or death, may be released on bail under Section 437 (1) Cr.P.C., provided:

(i) There are no reasonable grounds for the Court to believe that the accused has been guilty of the offence punishable with death or imprisonment for life, or;

(ii) the accused is under the age of 16 years or a woman or a sick or infirm.

The existence of the aforesaid circumstances merely enables the Court to consider the application for grant of bail under Section 437(1), Cr.P.C. However, the considerations which go into the making of the decision whether to grant bail or not, are those that we have exhaustively considered and set out herein above. Thus, it would depend on the circumstances of the individual case, whether or not the accused should be released on bail by the Court under Section 437(1), Cr.P.C.. The reference stands answered in the aforesaid terms.”

15. The issue in hand was conclusively answered by the Supreme Court in Dataram Singh (supra) where it was held:-

“16. In our opinion, it is not necessary to go into the correctness or otherwise of the allegations made against the appellant. This is a matter that will, of course, be dealt with by the trial Judge. However, what is important, as far as we are concerned, is that during the entire period of investigations which appear to have been spread over seven months, the appellant was not arrested by the investigating officer. Even

when the appellant apprehended that he might be arrested after the charge-sheet was filed against him, he was not arrested for a considerable period of time. When he approached the Allahabad High Court for quashing the FIR lodged against him, he was granted two months' time to appear before the trial Judge. All these facts are an indication that there was no apprehension that the appellant would abscond or would hamper the trial in any manner. That being the case, the trial judge, as well as the High Court ought to have judiciously exercised discretion and granted bail to the appellant. It is nobody's case that the appellant is a shady character and there is nothing on record to indicate that the appellant had earlier been involved in any unacceptable activity, let alone any alleged illegal activity.” (emphasis added)

16. In the present case, the Investigating Agency has filed the charge-sheet without arresting the petitioners. The relevant portion of the translated true typed copy of the charge-sheet placed on record alongwith the petition is reproduced below:-

“During investigation of case an independent witness has also been examined, who has deposed in his statement that a man namely Mohan had purchased a house from him in Burari, which there Complainant 'X' didn't use to come also on 10.11.16 Sanjay (accused), his wife and a man and a woman had come at Burari and took away Mohan, his family and 'X' with them and that on next day Sanjay told him on phone that Mohan and 'X' has accepted mistakes of their theft and they have accepted also that they have purchased a house from the money they have theft.

During investigation accused Sanjay, Gautam and Deepika were made to join the investigation and interrogated. That during investigation accused Sanjay told that 'X' has served at his house till his father's death, whereas his father passed away in April only and the death certificate of his father given by

Sanjay was taken into Police custody, which is annexed with the file.

That Complainant has made allegation of rape after about one year and an independent witness has also come forward, who has told in his statement that complainant 'X' in November, 2016 used to live in Burari along with a person namely Mohan and accused Sanjay had lodged a complaint of extortion against 'X' and her associates prior to registration of case by 'X'. Subsequently on the said complaint an FIR No.07/18, u/s 385/120B/343 IPC was registered at Model Town Police Station against 'X' and her associates, which is pending adjudication. That in this case no other material has been found against the accused persons other than the statement of complainant. So, accused persons are being charge-sheeted without arrest."

17. I have perused the case file produced by the learned APP. The incident alleged in the FIR relates to the offence committed on the intervening night of 12/13th November, 2016. The complainant had come back to Delhi about 3/4 months prior to the lodging of the FIR. The FIR has been registered after a delay of more than one year. The investigation in the present case was transferred and the charge-sheet has been filed by the DIU, North West.

18. Apparently, the WhatsApp messages and the letters received from the NGO, namely, "Mission Azad Foundation" about the withdrawal of money by the petitioners from the account of the complainant and the said Mohan, however, is silent about any allegation of rape. The messages & the letters received from the above NGO, are subject matter of investigation in the FIR No.0007/2018 lodged at the instance of Sanjay Gupta. As per the charge-sheet and the Status Report, the petitioners had joined investigation not only prior to the filing of the charge-sheet but even

subsequently when directions for further investigations were given by the learned MM on 20.02.2019. It is noted that further investigation was directed on the aspect of investigation relating to allegations of kidnapping of wife and children of Mohan as well as the banking transactions relating to the account of the complainant and the said Mohan. The evidence with respect to the banking transaction is documentary in nature. As per the Status Report filed on behalf of the State, it is stated that:-

“The prosecutrix had stated in FIR that after the alleged rape, she narrated the whole incident to the servant Mohan Yadav. However, during investigation efforts were made to examine Mohan Yadav in this regard but the prosecutrix failed to trace the address or contact number of Mohan Yadav. I.O. also tried to trace Mohan Yadav at all relevant places in Delhi. But he could not be traced. As a result, Mohan Yadav could not be examined so far in the case.

From the investigation conducted so far there is no corroborative evidence against any of the accused as far as allegation of rape is concerned. Any regards allegation of forceful transaction of money and signature on blank papers, there is inconsistency in the version of the prosecutrix. Further Mohan Yadav who is the material witness as per allegations, could also not be examined so far as he is not traceable.”

19. Having gone through the case file and the relevant law, which has been placed on record and in the facts and circumstances of the case, it is directed that in the event of arrest, the petitioners be released on bail, on their furnishing personal bonds in the sum of Rs.1,00,000/- each with one surety of the like amount to the satisfaction of the I.O./SHO & subject to following conditions:-

(i) The petitioners/applicants will not directly or indirectly make any inducement, threat or promises to the complainant or any witness during the investigation/trial or tamper with the evidence.

(ii) The petitioners/applicants will provide the I.O./SHO, Police Station Model Town, North West District, Rohini, Delhi with their mobile numbers and in the event of change of their residential addresses, shall inform the same to the I.O./SHO.

(iii) The petitioners/applicants will not leave the jurisdiction of the National Capital Territory of Delhi without prior permission of the concerned Court.

(iv) The petitioners/applicants will appear before the concerned Court on all occasions.

20. With the above directions, the petitions are disposed of.

21. Needless to state that nothing stated hereinabove, will be considered as an expression of opinion on the merits of the case.

DASTI.

(MANOJ KUMAR OHRI)
JUDGE

JULY 11, 2019

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