

\$~56

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

Date of decision: 22.11.2019

+ BAIL APPLN. 2906/2019

MR. MAQSOOD AHMAD KHAN Petitioner

Through: Mr. B.L. Madhukar, Adv.

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP for State
with SI Pankaj Thakran, PS – Sarai
Rohilla
Mr. Muntazir Mahendi, Adv. for
complainant with parents of
prosecutrix

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A. 40915/2019 (Exemption)

1. Allowed, subject to all just exceptions.
2. This application is, accordingly, disposed of.

BAIL APPLN. 2906/2019

3. The present application is filed under Section 438 Code of Criminal Procedure, 1973 (Cr.P.C.) for grant of anticipatory bail.
4. The admitted facts of the present case are that in the aforesaid FIR,

the charge-sheet was filed without arresting the petitioner. The summons were served one day prior to the date of hearing which was fixed as 18.10.2019 and on the said date, application for exemption was filed which was opposed and declined by the learned Additional Chief Metropolitan Magistrate ('ACMM') and NBW was issued against the petitioner. Since in the FIR Section 376 IPC was added, the petitioner had moved an application for anticipatory bail which was kept pending for hearing on 01.11.2019. On the said date, the petitioner moved an application for staying the NBWs issued against the petitioner till the disposal of the anticipatory bail, however, same was dismissed on 01.11.2019 and the application for anticipatory bail was also declined by the court of learned Additional Sessions Judge, Tis Hazari Courts, Delhi.

5. Learned counsel appearing on behalf of the petitioner submits that on the same day i.e. 01.11.2019 finding absence of the petitioner, the learned Trial Court did not further issue NBWs against the petitioner because the case file was with the Sessions Court and the next date of hearing was fixed for 14.11.2019. On the said date, finding absence of the petitioner, the learned Trial Court had issued NBWs against the petitioner.

6. Thereafter, the petitioner preferred to file the anticipatory bail before

this Court which was listed for 15.11.2019, however, the same was withdrawn with liberty to file afresh.

7. Learned counsel further submits that the petitioner had apprehension of his arrest in consequence of the NBWs issued against him as the petitioner wanted to appear before the Trial Court bonafidely to prove his defence that the allegation and the story in the FIR is totally false, fabricated, frivolous, concocted and with a view to extort money from the petitioner to settle the matter with the petitioner of the previous FIR bearing no. 456/2018 lodged against the minor son of petitioner.

8. He further submits that originally, the abovementioned FIR was registered on the false and frivolous allegations of the complainant, wherein she has alleged that she had previously lodged FIR No. 0456/18 under Sections 376/506 IPC and Section 6 of POCSO Act, registered against one Faizan Ahmed (who is minor son of the present petitioner). It is alleged by the complainant in present case/FIR that on 18.02.2019 at 7.00 PM, the petitioner along with his nephew Maqsood Ahmad, on seeing the complainant, started raising vulgar and obscene instigations towards her. Whenever she comes out of the house, he always follow her and shows his private parts and also says to the complainant to give statement in his favour

in the court, otherwise the complainant would be killed and the case will be closed of its own.

9. It is further alleged by the complainant that on 17.02.2019, in the morning at about 7.15 AM, when she was going downstairs, the petitioner covered/closed her face and touched her private parts of body with oblique intentions and stated, she should accompany him for having physical relations with him.

10. Learned counsel for petitioner submits that with these allegations, the complainant got her complaint lodged with the police, apprehending acid attack on her at any point of time and as such, she made complaint against the petitioner and Maqsood Ahmad.

11. Learned prosecutor appeared on behalf of the State alongwith Mr. Muntazir Mehendi, learned counsel for the complainant admitted that the charge sheet was filed without arrest of the petitioner. Thereafter, he appeared in Court. However, the date on which he did not appear, NBWs were issued against him. He filed an application for recalling of NBWs, which had also been dismissed. However, instead of challenging the dismissal order, the petitioner has filed application under Section 482 Cr.P.C. seeking anticipatory bail.

12. As submitted by the learned counsel for petitioner that after issuing NBWs, he had apprehension that the Court may take him into custody, he moved an application for recalling of the NBWs, however, the same had been rejected. The charge sheet was filed without arrest of the petitioner and on one date, when he could not appear for which he moved an application for exemption, but the application was rejected and NBWs issued.

13. In view of the above facts and circumstances, I am of the view that justice would be met if order of NBWs is set aside. Accordingly, I hereby set aside the impugned order and direct the learned Trial Court to admit the petitioner on bail on furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to its satisfaction.

14. The petition is accordingly allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 22, 2019

PB