

\$~12

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

+ CRL.M.C. 2679/2017

MANSI TOKAS

Through Petitioner
Mr. Atul T. N., Mr. Ankit Khanna
with Mr. Devendra Verma, Advs.

versus

STATE & ORS

Through Respondents
Mr. Izhar Ahmed, APP for State
Mr. Rajeev Chhetri, Ms. Meenakashi
and Mr. Aman, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **06.11.2019**

Vide the present petition, the petitioner prays before this Court for cancellation of bail of respondent no.2 granted by learned ASJ vide order 22.06.2017 in case FIR No. 197/2017 registered at Police Station Vasant Vihar for the offences punishable u/s 10/12 of POCSO Act and 354/506 of IPC.

It is stated in the present petition that the bail was obtained by the Respondent No. 2 by playing fraud upon the court in the form of concealing & misrepresenting the facts before the Hon'ble court and further the bail order was obtained on the basis of false/forged document of compromise which was never executed between the Petitioner's mother and the Respondent no 2.

The IO of the present case was not even present in the Court on the

date of passing of the impugned order dated 22.06.2017 and the learned ASJ had not even perused the chargesheet and also ignored the last dismissal order of the bail application dated 01.06.2017, passed by the learned ASJ.

Learned counsel for the petitioner submits that after coming out of Jail the Respondent No. 2 again pressurised the Complainant and her family to withdraw the cases and even followed the Parokar i.e. Pooja Tokas and confronted her and threatened her with dire consequences which itself is violation of the conditions imposed in the bail order dated 22.06.2017. Later on the Complaint was filed in this regard and FIR bearing no 109/2017 was registered u/s 506 of IPC,1860.

It is further submitted that the Respondent no 2 obtained the bail order from the Ld ASJ without disclosing the fact that the Writ Petition No. 1796/2017 was already pending before this Court in which court has already passed an order for providing police protection to the Petitioner and her family members for 4 weeks i.e. till the recording of the evidence of the Petitioner, as there is an imminent threat to the life of the Petitioner and her family.

This Court vide order dated 15.06.2017, in the writ petition mentioned above directed the Concerned Deputy Commissioner of Police of South District to be personally present in the court on the next date of hearing i.e 26.06.2017 for the purpose of explaining to the court what action was taken by him on the complaints dated 24.05.2017 and 30.05.2017, filed by the Petitioner against the Delhi Police officials who were threatening and pressurizing the Petitioner and her family to withdraw her complaint against her own father.

Learned counsel for the petitioner submits that the petitioner filed

above mentioned writ in this Court seeking transfer of investigation from local police to CBI or any other independent Agency as the Delhi Police officials are hand in gloves with the Respondent no.2 and are threatening and pressurizing the Petitioner and her family to withdraw her complaint.

In the present petition, the allegations made against the IO are that the concerned IO has filed a Chargesheet, in the FIR no. 197/2017 merely in 24 days approximately, without conducting proper & due investigation and without considering the fact that the Petitioner is a minor girl and has filed a complaint against her own father under the relevant section of POCSO ACT, 2012 and Indian penal Code, 1860.

The Ld ASJ, without due application of mind, granted the bail to the respondent no.2 vide order dated 22.06.2017, during the vacation, in the absence of the IO and without summoning the Judicial file from the trial court.

On the other hand, learned counsel appearing on behalf of respondent no.2 submits that there was a long running matrimonial dispute between the mother of the prosecutrix and her husband i.e. respondent no.2 in Samalkha (Haryana) and the said complaint and disputes have been compromised and settled between the mother of the prosecutrix and the respondent no.2. This fact was brought to the notice of the learned ASJ, therefore, despite rejection of bail vide order dated 01.06.2017, learned ASJ granted the bail on 22.06.2017. He further submits that wife of the respondent no.2 wants to grab the property from respondent no.2 in connivance with the prosecutrix, therefore, prosecutrix has made false and frivolous allegations after four-five months of the alleged incident. Accordingly, the FIR mentioned above was registered on 12.05.2017.

The fact remains that vide order dated 01.06.2017, the bail was rejected by the learned ASJ and on 22.06.2017, bail was granted to the respondent no.2 and on the said date, neither the prosecutrix nor the IO of the present case was present before the Court. Moreover, the compromise alleged to have taken between the mother of the prosecutrix and respondent no.2 has been denied and it has been submitted that neither the prosecutrix nor her mother have ever executed or entered into any kind of compromise with the respondent no.2. However, the respondent no.2 misled the Trial Court at the time of granting the bail as the bail was granted on the basis of false/forged document of compromise executed between the petitioner's mother and the respondent no.2.

It is not in dispute that on the date of the order when the bail was granted to the respondent no.2 i.e. 22.06.2017, it had not been disclosed to the learned Trial Court that the mother of the prosecutrix had filed W.P. (Crl.) No.1796/2017 before this Court, seeking transfer of investigation and police protection because the prosecutrix and her family were receiving continuous threats from respondent no.2 and subsequently, police protection had been granted for four weeks, till their evidence was recorded.

As per status report dated 26.10.2017 filed on 27.10.2017 in W.P. (Crl.) No. 1796/2017, whereby it is stated that the victim has already got security and police protection as per order dated 06.06.2017 passed by learned ASJ, Patiala House Courts for four weeks. W/SI Kailash Kain and beat staff have been continuously visiting the house of the petitioner. Mother and sister of the petitioner were provided phone numbers of SI Ranveer (Division Officer Munrika) and W/SI Kailash and beat officers Ct. Sampat and Ct. Vikram. The aforesaid officers were also provided the phone number

of Ms. Pooja Tokas, sister of the prosecutrix.

It is further stated in the status report that complaint was filed by Smt. Saroj (Mother of prosecutrix) vide DD No 64B dated 20.05.17 wherein she alleged that someone has stolen her laptop, golden chain, 2 pairs of gold earrings, 20 expensive watches, 2000 rupees in cash and other things which were lying in the house.

Accordingly, an FIR No 270/17 was registered at Police Station, Vasant Vihar for the offence punishable U/s 380 IPC.

It is further stated in the status report that on 24.05.2017, Mrs Saroj filed another complaint at the office DCP/SD against Satender, Rakesh, Anita, Rajwala, Santosh, Vidya, Ravi regarding assault and criminal intimidation to withdraw the case. On the basis of the above-said complaint, preventive proceeding U/s 107/150 Cr.P.C. has been initiated against above mentioned persons as there was breach of peace and disturbance in public tranquillity.

Further, on 30.05.2017, Mrs Saroj filed another complaint at PS Vasant Vihar vide DD No-79B against Kamla, Vidya and others regarding criminal intimidation to withdraw the case which was filed by her daughter (petitioner in present case) against her father on which, FIR u/s 506 IPC has been registered at PS Vasant Vihar. It is pertinent to mention here that on 17.10.17, an order from DLSA, Patiala House Court Complex New Delhi was received at Police Station Vasant Vihar New Delhi. In this order, DLSA mentioned that *"a letter dated 06.10.17, written by Saroj Tokas (mother of the petitioner) was received at DLSA, Patiala House New Delhi from the office of Hon'ble acting Chief Justice, High Court of Delhi and executive chair person. On the direction of the DLSA, the mother of victim appeared*

in DLSA and she informed that the accused has already been released on bail and application of cancellation of bail is pending before Hon'ble High Court, Delhi. There are continuous threats to the victim, her mother, her sister and other family members from the accused person and his associates. The petitioner is also residing out of Delhi due to life threat from father (accused person).”

Accordingly, the DLSA, directed SHO/Vasant Vihar to provide round the clock armed security guard to the petitioner and her family members in civil uniform till further order. Accordingly, security was provided to the petitioner and her family members which remained for four weeks.

As mentioned above, there are many threats to the petitioner and her family members from the respondent no.2 and his family members, I am of the considered view that there is very likelihood that he can harm the complainant/victim and also compel the victim to withdraw the case and tamper the evidence or influence the witnesses.

Without commenting on the merits of the prosecution case mentioned above and without commenting on the case which was filed by the petitioner in W.P. (Crl.) 1796/2017, I am of the considered view that if the respondent no.2 remains on bail, there will be continuous threat to the petitioner and her family members, moreover, the learned Judge while granting the bail vide order dated 22.06.2017, has not considered the fact that the earlier bail application of respondent no.2 was rejected vide order dated 01.06.2017. On the date of granting bail, even the IO of the case was not present in Court. Therefore, there was no hurry in the absence of the IO and there was no occasion to grant the bail on the very said date.

Accordingly I hereby set aside order dated 22.06.2017 whereby

respondent no.2 was admitted on bail. Consequently, the respondent no.2. shall surrender before the learned Trial Court on 08.11.2019 at 02:30 pm.

Order dasti under the signatures of Court Master.

SURESH KUMAR KAIT, J

NOVEMBER 06, 2019/ms