

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

%

Reserved on : 22.01.2020

Pronounced on : 06.02.2020

+ **BAIL APPLN. 3105/2019**

NITIN SHARMA

..... Petitioner

Through Mr. Ramesh Gupta, Sr. Advocate
with Mr. Lokesh Kr. Mishra, Mr.
Ajay P. Tushir and Mr. Shailender
Singh, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through Ms. Rajni Gupta, APP for the State.
Mr. Jugal Bagga, Advocate for
prosecutrix.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

CrI. M.A. No. 1436/2020

This is an application u/s 482 Cr.P.C moved on behalf of the petitioner seeking impleadment of complainant/prosecutrix as respondent No. 2 in the present bail application.

Heard. The application is allowed. Complainant/prosecutrix is impleaded as respondent No. 2 in the present bail application. The application stands disposed of.

BAIL APPLN. 3105/2019

1. This is an application filed under Section 438 read with section 482 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No.659/2019 U/s 376/506/509/323/312 IPC registered at Police Station-Vasant Kunj South.
2. Briefly stated, the FIR in the instant case was registered on 15.11.2019 on the complaint dated 13.11.2019 of the prosecutrix /complainant in which she alleged that she joined Kidzee School as a teacher on 2.11.2016 and she has been raped, assaulted, beaten, threatened and blackmailed by the petitioner since last week of September 2017 in the premises of two schools owned by the petitioner.
3. The prosecutrix/complainant has further alleged that on 20.04.2019 she was brutally assaulted and raped by the petitioner in the premises of Kidzee School at Vasant Kunj. It has been further alleged that because of forceful intercourse, the prosecutrix / complainant became pregnant and underwent an ultrasound at a clinic in Vasant Kunj. It is further alleged that on coming to know about the pregnancy of the prosecutrix / complainant, the petitioner administered pills to the prosecutrix / complainant for abortion. The prosecutrix / complainant has further alleged that the petitioner used to extend death threats to her and also used to black mail her on the pretext of revealing her ultrasound reports to her family

members.

4. The state has filed the status report.

5. I have heard the Ld. APP for the State and Ld. Sr. counsel for the petitioner at length.

6. It is submitted by the Ld. Sr. counsel for the petitioner that the petitioner is innocent and has been falsely implicated in the present case. He further urged that there is two years delay in the registration of the FIR which remains unexplained and the relationship between the petitioner and the prosecutrix/complainant was consensual. He further urged that the video, greetings and other photographs which were clicked or prepared after the incident of rape completely falsifies the story of the prosecution. He further urged that the investigating agency has already recorded the statements of 40 other ladies employees, working in the petitioner's organization and they all have stated that the conduct and behaviour of the complainant/prosecutrix was not satisfactory. He further urged that no other ladies employee of the organization have ever alleged anything wrong against the petitioner. He further urged that the petitioner terminated the services of the complainant /prosecutrix on 09.11.2019, so the complainant herself visited the house of the petitioner on 09.11.2019 and approached the mother of the petitioner and requested her to ask the petitioner to take her back in the job but the petitioner refused to do so, only then on 15.11.2019, the complainant got registered the present FIR on account of anger and frustration. He further submitted that the CCTV footage has already been handed over to the IO and nothing incriminating has been found against the petitioner in the same. He further urged that the complainant/prosecutrix

has worked as a Principal of one of the franchisee school and it is highly improbable that she would not raise alarm or protest against the acts of petitioner subjecting her to repeated sexual assault and threats. He further urged that in the video clips of annual ceremony of the school the complainant can be seen praising the petitioner and even touching his foot in his honour and it is not expected from a victim of rape to give this much honour or regard to the culprit of rape. He further urged that in the photographs filed on record the complainant /prosecutrix can be seen enjoying with her friends and in one of the photographs taking liquor. He further urged that the complainant/prosecutrix in her complaint has stated that she had a video of one of the alleged forcible sexual assault by the petitioner but no such video was handed over to the IO by her which shows the falsity of the allegations. Ld. Sr. counsel for the petitioner has relied upon ***Jagdish Nautiyal Vs. State*** MANU/DE/6227/2012 and ***Bhadresh Bipinbhai Sheth Vs. State of Gujrat and Ors***, MANU/SC/0949/2015.

7. Ld. APP for the state has argued on the lines of the status report and submitted that the allegations against the petitioner are grave and serious in nature. She further submitted that the petitioner committed rape upon the prosecutrix/complainant by misusing his position of being the employer and the owner of the school franchisee where the prosecutrix / complainant used to work as centre head of one of the school franchisee. It is further stated by the Ld. APP for the state that the petitioner is not joining the investigation so NBW were got issued against him on 2/12/2019 but the same could not be executed. She further submitted that process U/s 82 of Cr.P.C. is to be issued against the petitioner. It is further submitted by the

Ld. APP for the state that the petitioner administered pills to the prosecutrix / complainant for abortion, blackmailed her and also extended death threats to her. She further submitted that custodial interrogation of the petitioner is required and he is not entitled to bail.

8. It is further submitted by the Ld. APP for the state assisted by the Ld. counsel for the complainant / prosecutrix that the prosecutrix/complainant was badly beaten by the petitioner which is evident from the photographs which have been placed on record. She further submits that the arguments of the Ld. Sr. counsel for the petitioner that the petitioner was enjoying good times with the petitioner does not give any license to the petitioner to rape her. It is further submitted that the complainant/prosecutrix was in the employment of the petitioner so she had to keep company with him in the school functions. It is further submitted by the Ld. APP for the state that on 20.10.2019 the ultrasound of the complainant/prosecutrix was conducted and she was found to be 11 weeks pregnant and as per the complainant/prosecutrix the petitioner gave her abortion pills. It is submitted by the Ld. APP for the state that on 20.04.2019 the complainant/prosecutrix was brutally beaten by the petitioner and the complainant/prosecutrix has produced the video of the said beatings by the petitioner in the pen drive which has been seized and the same is 22 minutes long.

9. It is further submitted by the Ld. APP for the state that the petitioner and the complainant/prosecutrix were in fiduciary relationship and she was being threatened and blackmailed so she could not muster courage to lodge the complaint immediately. However, it was a continuous offence and the petitioner brutally assaulted and attempted to commit rape upon the

complainant/prosecutrix on 09.11.2019 and 20.04.2019.

10. The contention of the Ld. Sr. counsel for the petitioner that there is a delay in the registration of the FIR has no force in it since according to the complainant/prosecutrix her ordeal started in September 2017 and the two incidents according to the prosecutrix / complainant took place on 20.04.2019 and 09.11.2019. According to the complainant / prosecutrix she has also supplied a video clip to the IO showing the physical assault on her by the petitioner. The complainant/prosecutrix has also filed photographs on record to show that she was assaulted by the petitioner.

11. According to the Ld. APP the video clipping shows that the petitioner is assaulting the complainant /prosecutrix. It has also been vehemently argued by the Ld. Sr. Counsel for the petitioner that the photographs of the complainant/prosecutrix filed by the petitioner on record shows that the complainant/prosecutrix is enjoying with her friends and in one of the photographs she is even seeing taking liquor so the Ld. Sr. counsel argued that if she was being raped and tortured then she could not have remain so happy and taken liquor. Now this arguments of the Ld. counsel is highly preposterous. It was not for the complainant / prosecutrix to keep moron face all the times and even if she was enjoying or taking liquor, it does not give any license to the petitioner to assault or rape her. It has also been argued by the Ld. Sr. counsel for the petitioner that since the complainant/prosecutrix was terminated from her services, therefore she has filed a false complaint with the police. As far as the falsity of the complaint is concerned, it will be seen during the time of trial, however, the petitioner has placed on record the photocopy of termination letter of

the complainant /prosecutrix and this letter is an undated letter of termination and only says that she has been terminated w.e.f. 09.11.2019. The counsel for the petitioner further refers to an appointment letter of one Nidhi Bhatia dated 13.11.2019 in place of the complainant/prosecutrix.

12. As far as the termination letter is concerned, it does not bear any date and as far as the appointment letter is concerned, the same is an unsigned letter and therefore, the Ld. APP for the state argues that these two letters have been prepared as an afterthought in defence of the petitioner. As far as the contention of the Ld. Sr. counsel for the petitioner that the complainant/prosecutrix had regards for the petitioner and she used to written good words for the petitioner in the cards, in my opinion, even if the complainant/victim has written some good words for the petitioner in the form of some cards, then also it does not mean that the petitioner had the liberty to do what has been alleged against him. The petitioner had not joined the investigation so NBWs were got issued against him on 02.12.2019 which remains unexecuted and the process U/s 82 Cr.P.C was to be initiated against him.

13. It is settled principle of law that each criminal case revolves on its own peculiar facts and circumstances. There is no dispute with regard to the proposition of law laid down in the judgments relied upon by the Ld. counsel for the petitioner but with due regards the same are distinguishable on facts. In the instant case, as per the allegations, the complainant/prosecutrix was pregnant. Her ultra sound report reveals that she was having pregnancy of 11 weeks and according to the victim her ultra sound report was taken by the petitioner who used to blackmail her using

the reports of her ultrasound and the petitioner even threatened her and gave her abortion pills. It is also submitted by the Ld. APP for the state that the ultra sound report of the victim is to be recovered.

14. In view of the above discussions and looking into the facts and circumstances of the case, the allegations against the petitioner which are grave and serious in nature and also the fact that the petitioner has not joined the investigation, no ground for bail is made out. The bail application is, therefore dismissed.

15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

FEBRUARY 06, 2020

Sumant

न्यायमेव जयते