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

+ **BAIL APPLN. 2514/2019**

VIMLESH AGNIHOTRI

..... Petitioner

Through Mr.Kumar Mukesh, Adv. with
Mr.Sona Kumar, Mr.Ajay Pratap
Singh Solanki & Mr.Abhimanyu
Kumar, Advs.

versus

STATE

..... Respondent

Through Mr.Hirein Sharma, APP for State.
Insp.Harendra Singh SI Renu Meena
PS Aman Vihar.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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17.01.2020

The present petition is filed under section 438 read with 482 of Cr.P.C. for grant of anticipatory bail in pursuance to FIR No.343/2019 registered at Police Station Aman Vihar, Delhi for the offences punishable under sections 376 IPC.

It is pertinent to mention here that the sister-in-law of the complainant has lodged an FIR No.193/2019 dated 26.04.2019 registered for the offence punishable under section 376 IPC against Vimal Tripathi who is husband of the complainant.

The petitioner is the accused in the present FIR who was supporting her sister-in-law (complainant in FIR No.193/2019) and to take revenge the

complainant has implicated petitioner in a false case to set her personal grudge and to make the sister-in-law of petitioner to withdraw/compromise in the FIR No.193/2019.

Counsel appearing on behalf of the petitioner submits that act of complainant is nothing but a counter blast to the earlier FIR No.193/2019. He further submits that sister-in-law of the complainant has already made a complaint to the Deputy Police Commissioner, District Rohini in letter dated 18.06.2019 which was duly received on 19.06.2019 wherein husband of the complainant extended threat to the sister-in-law of the petitioner. On 01.08.2019, sister-in-law of the petitioner made a complaint to the Deputy Commissioner of Police, District Rohini against Vimal Tripathi, husband of the complainant in F.I.R No. 0343/2019 at Police Station Aman Vihar, Rohini that Vimal Tripathi was giving threat to the complainant i.e. sister-in-law of the petitioner by sending people to her home thereby compelled her to withdraw her statement in the Court in F.I.R No. 0193/2019. Again, petitioner and her sister-in-law had filed a complaint to the Deputy Police Commissioner, Rohini on 05.08.2019 against the husband of the complainant.

Learned counsel further submits that present FIR filed by the complainant against petitioner is to harass the petitioner and to create pressure upon his sister-in-law to withdraw her statement in the F.I.R No. 0193/2019 which is filed against the Husband i.e. Vimal Tripathi of the complainant.

Learned APP for the state and counsel appearing on behalf of complainant submit that on 05.05.2019 at around 09:30 in the evening, the doorbell of the complainant's house rang and when she opened the door, a

person was standing at the door. When she asked, he disclosed his name as Vimlesh Agnihotri and wanted to meet Vimal Ji. However, she informed that he was not at home and would return from out station after two days. Still, the petitioner again asked to open the door as he had to give some papers to Vimal Ji. As soon as complainant opened the iron gate, the petitioner entered her house alongwith a girl and a woman, and petitioner pushed the complainant inside the room and the woman locked the door. The petitioner pushed her on the bed and the girl kept her mouth shut so she could not make any noise. After that petitioner raped her by force and during that incidence, the woman made a video. The petitioner also threatened her that if she told anyone about that incidence, he would circulate that video on the internet. After that all three persons went away. After passing of two days, when husband of the prosecutrix came back, she could not tell anything due to fear. She was upset and her husband sent her to maternal home for her peace of mind. However, the prosecutrix went to Police Station Aman Vihar for registering the complaint against the petitioner and other co-accused persons. Consequently, the FIR in question was registered.

During the hearing of the present petition, on 01.10.2019, learned APP, on instructions from SI Renu Meena-Investigating Officer (IO) of the present case, sought time to verify phone location of the petitioner and CCTV footage, if any, and to file the status report.

Thereafter, matter was heard on 22.10.2019 and on the said date, status report 15.10.2019 was on record and as per the status report, it is stated that during the course of investigation, the CDR location dated 05.05.2019 of mobile number (9211204584) of accused Vimlesh Agnihotri

was found at H.NO. F-14, Phase-6 Aya Nagar New Delhi and CDR location of mobile number (7007769543) of co-accused Anjana Tiwari was found at Madhuban Chowk, Delhi but the CDR location of mobile number (7007769452) of accused Vimlesh Agnihotri the petitioner therein was awaited.

In the said report, it was further stated that during the course of investigation, CCTV footage was checked, but the period sought was not available. During further course of investigation, Anjana Tiwari had produced the screenshots of WhatsApp chat with Vimal Tripathi which was analyzed and it was found that Vimal Tripathi was misguiding as well as giving fake assurance to Anjana Tiwari and also concealing the fact of his marriage. She was asked about the lady who was present in Rohini Court with her on 25.09.2019. Accordingly, sister of alleged Anjana Tiwari namely, Reena Agnihotri w/o Sh. Akhilesh Agnihotri R/o G-248, Gali No. 14 Paras Colony, Aya Nagar, Delhi was examined.

It is also stated that during the course of investigation, exhibits (Mobile phone & CD) were seized in the matter and the same were sent to FSL, Rohini for expert opinion and the result of the same was awaited. Accordingly, IO was directed vide order dated 22.10.2019 to file CDR location of mobile no.7007769452 of the petitioner at least three days before next date of hearing.

The matter was again taken up on 07.01.2020 and SI Renu, IO of the case was personally present in court and submitted that on 30.12.2019, she sent notice under section 91 Cr.P.C. to the nodal officer of Reliance Jio and Bharti Airtel Ltd., however, for the same, permission of DCP concerned was required, which was received on 06.01.2020.

Since the order of this court was not complied with, therefore, SI Renu and DCP, Rohini were directed to file an affidavit stating therein the reasons of delay. Consequently, the affidavit is on record and this court is satisfied with the steps taken by the IO as well as DCP mentioned above.

In status report dated 14.01.2020, it is stated that CDR location of mobile number (7007769452) of petitioner was found at Gurugram between 1:52 PM to 4:15 PM on 05.05.2019, i.e., date of alleged accident.

It is further stated that during the course of investigation, an application before the Trial Court was moved for recording the voice sample of accused Vimlesh Agnihotri, his sister-in-law Anjana Tiwari, complainant 'S' Chaturvedi & her husband Vimal Tripathi in connection with audio recording dated 05.05.2019 produced by petitioner. As stated by counsel for the complainant, the said application has already been allowed on the said date i.e. 16.01.2020.

As per the certified copy of CDR location dated 05.05.2019 of mobile number (9211204584), petitioner was found at MTNL exchange Sector-22, Rohini, Delhi at 9:11PM whereas as per the certified copy of CDR location of mobile number (7007769543) of accompanied Anjana Tiwari dated 05.05.2019 was found at West Enclave, Pitampura, Delhi at 08:07 PM & at 10:02 PM. The certified copy of CDR location of mobile number (8384022558, 8860780094) of accompanied Reena Agnihotri dated 05.05.2019 was found at Aya Nagar Extension, Delhi. Thus, locations of all three accused were at different places.

As per the allegations of the prosecutrix, the petitioner was along with two other ladies named above, but their locations are not at the place of incidence. However, without commenting on the merit of the prosecution

case, this Court is of the considered view that the present case is fit for anticipatory bail. The SHO/ Arresting Officer/IO concerned, is hereby directed that in the event of arrest, the petitioner/ applicant shall be released on bail on the following terms and conditions:-

(i) Petitioner shall furnish a personal bond in the sum of ₹25,000/- with one surety in the like amount subject to the satisfaction of Arresting Officer/SHO/IO concerned;

(ii) Petitioner shall cooperate with the investigation and make himself available for interrogation by, as and when required by IO;

In case of default of aforementioned conditions, the State is at liberty to take appropriate recourse in accordance with law.

Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case.

Application stands allowed and disposed of.

Order dasti under signatures of the Court Master.

SURESH KUMAR KAIT, J

JANUARY 17, 2020

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