

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

Date of Decision : 22.01.2020

+ **BAIL APPLN. 67/2020**

Ali Sher Saifi

..... Petitioner

Through: Mr. R. N. Gupta, Mr. Sajid
Ansari, Mr. Firoz Iqbal Khan
& Mr. Amit Kumar Pandey,
Advocates

versus

THE STATE OF DELHI

..... Respondent

Through: Mr G.M.Farooqui, APP for
State alongwith W/SI Jyoti,
P.S. Model Town.

Mr. Ajay Kumar P. Paniya,
Ms. Pallavi P. Paniya. Mr.
Akash Sethi, Ms. Nikita
Garg, Mr. Paras and Mr.
Imtiaz, Advs for complainant.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J (ORAL)

Crl. M.A. No. 1308/2020 (for filing additional documents).

Allowed.

Application stands disposed of.

BAIL APPLN. 67/2020

1. Vide this order, I shall dispose of anticipatory bail application

filed on behalf of the petitioner Ali Sher Saifi under section 438 Cr.P.C in FIR No. 422/19, u/s. 344/376-D//506/34 IPC

2. The Ld. Counsel for the petitioner has submitted that FIR has registered on the written complaint dated 03.10.2019 of the prosecutrix/ complainant in which she has alleged that she is living with her mother at her residence and she is helping her mother in her business. The mother of the prosecutrix came in contact with Naresh Kumar Pandit and it is alleged that Naresh Kumar Pandit starting influencing the mother of the prosecutrix to do some pooja, rituals etc. so that the departed soul of petitioner's father can rest in peace. Naresh Kumar Pandit introduced prosecutrix's mother to Roop Kishore Gupta @ Chhotu. Roop Kishore Gupta @ Chhotu introduced prosecutrix's mother to Bablu Yadav and the petitioner. It is further case of the prosecutrix that one day when prosecutrix's mother was not at home, the petitioner sexually assaulted the prosecutrix and threatened her that if she discloses this fact to anyone, then the petitioner alongwith Roop Kishore Gupta and Naresh Kumar Gupta will kill prosecutrix's mother.

3. In her complaint petitioner further submitted that on 17/18

May, 2019 Bablu Yadav @ Salim came to the house of prosecutrix alongwith the petitioner and committed rape with the prosecutrix and again gave her threat. It is also alleged that while committing sexual intercourse with the prosecutrix, the petitioner and Bablu Yadav have made MMS of the said act and they threatened the prosecutrix and illegally confined her at flat no.263, Pocket B, Ground Floor, Narela.

4. It is submitted by Ld. Counsel that the actual fact as to why the prosecutrix has lodged false FIR against accused persons is that an F.I.R. bearing No.415/2019 dated 29.09.2019 was lodged by wife of the co-accused Roop Kishore against the prosecutrix's mother and her servant for committing offences under section 328, 354-B, 34 of Indian Penal Code and section 8 of the Protection of Children from Sexual Offences Act, 2012. Thus, as a counter blast, prosecutrix has lodged false FIR against the accused persons. It is submitted that on 25.05.2019, the prosecutrix in presence of her mother married co-accused Bablu Yadav and thereafter she started residing with the co-accused Bablu Yadav as her legally wedded wife. In the said marriage, the petitioner was one of the Witnesses.

The prosecutrix lived with the co-accused Bablu Yadav as her legally wedded wife till 10.09.2019. It is submitted that the allegation of the prosecutrix that she was illegally confined by the co-accused Bablu Yadav and petitioner is baseless, mala fide and concocted. There is evidence on records to show that the prosecutrix married Bablu Yadav out of her free will/consent and in presence of her mother and without any threat or coercion. Original photographs of co-accused Bablu Yadav and prosecutrix, which show that they were legally and happily wedded, and the transcript of the telephone conversation between prosecutrix and her mother were filed by the co-accused Bablu Yadav before the Ld. Trial court alongwith his bail application which were taken into consideration by the Ld. Trial court, while granting regular bail to co-accused Bablu Yadav.

5. It is submitted that the reason for filing false FIR by the prosecutrix against the petitioner is that on 17.12.2018, the petitioner entered into an agreement with the prosecutrix's mother for purchasing the basement of property bearing No.D-18, Ground Floor, GTK Road, Mahendru Enclave, Azadpur, Model Town, Delhi. The prosecutrix's mother agreed to sell the said property to

the petitioner for a total sale consideration of Rs.35.00 lakhs and on 17.12.2018 itself vide Cheque No.214648, the petitioner paid an advance amount of Rs.5 lakhs to the prosecutrix's mother. It was agreed that rest of the sale consideration amount i.e. Rs.30.00 lakhs would be paid within a period of 8 months when the title documents of the said property will be registered. The prosecutrix and her mother have become greedy and in order to forfeit the advance amount paid by the petitioner, a false F.I.R. has been registered against the petitioner. As soon as the petitioner came to know that a false F.I.R. has been lodged by the prosecutrix against the petitioner, the petitioner filed application for anticipatory bail before the Ld. Sessions Court North, Delhi. However, the Ld. Additional Sessions Judge (04) North vide its order dated 23.12.2019 dismissed the anticipatory bail application of the petitioner.

6. It is further submitted that on 24.12.2019, the Ld. Additional Sessions Judge (04) North vide its order has extended the interim protection granted to co-accused Naresh Kumar Pandit till the next date of hearing i.e. on 24.01.2020. The Ld. Trial court while extending interim protection has observed as under :

“...it does not appear that IO has carried through

investigation, on each and every aspect of the allegations leveled. Admittedly no corroborative material has been collected so far. Since the IOP has not been able to 'collect the same inspite of sending ,the copy of previous order dated 25.11.2019 to DCP concerned, I am of the considered opinion that indulgence of Joint Commissioner of Police concerned is required in the matter. Hence copy of order be sent to Joint Commissioner of Police concerned to ensure that thorough and fair investigation is carried out on each and every aspect of allegations leveled and Investigating Agency should take a clear stand qua the corroborative material.

The interim protection granted to the applicant is extended till next date of hearing. However, the applicant is directed to thoroughly cooperate in the investigation. ”

7. It is submitted that Ld. Trial court while dismissing the anticipatory bail application of the petitioner has failed to take into consideration the fact that bare perusal of the FIR reveals that there are general, vague and omnibus allegations made by the prosecutrix against the accused persons including petitioner. The Ld. Trial court also completely overlooked the fact that after the FIR was lodged against the accused persons, the prosecutrix was asked to go for medical examination, but she refused to give her consent for medical examination, and this clearly shows that the entire FIR lodged by the prosecutrix is false and fabricated. The Ld. Trial court while passing the dismissal order failed to appreciate that on a similar set of

allegations, co-accused Bablu Yadav has already been enlarged on bail by the Ld. Trial court and therefore, the petitioner is also entitled to get the benefit of anticipatory bail on the ground of parity. The police has completed the investigation in FIR no.422/ 2019 and final report/challan has already been filed by the police, and therefore, there is no necessity for custodial interrogation of the petitioner. It is, therefore, prayed that petitioner be granted anticipatory bail and he be released in the event of his arrest.

8. The application is opposed by the Ld. APP for the State on the ground that the allegations against the petitioner are serious in nature. The victim was raped by the petitioner/ accused and was also threatened by him. He has, therefore prayed for dismissal of the bail application.

9. I have considered the rival submissions. The present case was registered on the complaint of Victim/ prosecutrix. She has alleged that after death of her father the household affairs as well as the business was managed by her mother. Meanwhile, one Naresh Sharma @ Pandit came in contact of the mother of victim and influenced her mother for performing pooja-path and other rituals so

that the departed soul of her husband can rest in peace. Mr. Naresh Sharma @ Pandit introduced them to one Roop Kishore @ Chotu and both of them with their dishonest and malafide intention started inducing her mother and fraudulently got transferred immovable properties from her in favour of third party. They further introduced them to petitioner Ali and other co-accused Babloo Yadav @ Saleem @ Yatender. In July 2019, petitioner forcefully made sexual inter course with the victim at her home situated at Mahendru Enclave in the absence of her mother and later on Babloo Yadav @ Saleem @ Yatender also forcefully made sexual inter course with her and threatened her that in case she would report the matter to anyone, they would kill her as well as her mother. After that petitioner arranged fake marriage of victim with Babloo Yadav @ Saleem @ Yatender and forcefully took her to Flat No. 263, Sec. B-2, Ground Floor, G Block, Narela Delhi where she was kept in illegal confinement. Co-accused Babloo Yadav @ Saleem @ Yatender and petitioner have forcibly committed sexual intercourse with her one by one under threat and accused Naresh Sharma @ Pandit and Roop Kishore Gupta were kept as a guard outside the

flat. They threatened her that if she would complaint against them, they would release the MMS, which they had made when petitioner and co-accuseds Babloo Yadav @ Saleem had raped her.

10. During investigation statement of the complainant/ prosecutrix u/s 161 CrPC was recorded wherein she has mentioned that she did not remember the exact date of incident but it took place in the month of May, June and July, 2019. Accused Roop Kishore, Naresh Kumar Pandit and petitioner Alisher managed to get marriage of the prosecutrix solemnized with the co-accused Bablu Yadav @ Salim @ Yatender Singh on 25.07.19 against her consent. After that they took her to Narela where petitioner and Bablu Yadav raped her. She did not have her Mobile phone since 25.07.19. Victim has stated in her statement recorded u/s 164 Cr.PC that the petitioner has made sexual relations with her in the month of May 2019 on the pretext of removing all the bad and evil things and bringing prosperity in her business. Petitioner did all this at the behest of Naresh Pandit. In July 2019, Petitioner and co-accused Bablu made physical relations with her and at that time accused Naresh Pandit and accused Roop Kishore stood at the gate so that no

one could enter. As per the analysis of call detail record of the accused persons, presence of the accused Roop Kishore, Naresh Kumar Pandit and petitioner Alisher, has been ascertained in the area of Model Town and in Narela during the month of May, June and July, 2019.

13. During Investigation statement u/s 161 Cr.PC of victim's mother was recorded and she stated that Naresh Pandit hatched a criminal conspiracy so that petitioner can have physical relations with the prosecutrix. After that Naresh Pandit conspired with Roop Kishore to get her daughter evicted from her property. Naresh Pandit and Roop Kishore used to come to her house. They used to give them some intoxicants in food and they came to know about this fact later on. According to prosecution, the mother of the prosecutrix has never entered into any agreement for selling the basement of property bearing No D-18, Ground Floor, GTK, Delhi. She has denied of having any knowledge about the same. The mother of the prosecutrix was not aware as to why and for what purpose the amount of Rs 5 lakh was deposited in her bank account and when it came to her knowledge, she returned the same. She was

unaware about the ulterior motives of the accused persons.

15. During the investigation, it was revealed that the accused Bablu Yadav @ Saleem used to give the prosecutrix his own mobile phone to communicate with her mother and she was only allowed to talk in his presence and no separate mobile phone was provided to the prosecutrix. During investigation, Flat No. 263, Sec. B-2, Ground Floor, G Block, Narela Delhi was also visited and it was revealed on local enquiry that prosecutrix lived in that flat with petitioner and Bablu and she used to rarely come out from that flat and whenever she stepped out, she was not conscious and she used to talk very little. The petitioner Alisher is absconding and NBWs were issued against him by the learned court of Sh. Sachin, Gupta vide order dated 28.11.19. Proclamation u/s. 82 Cr.PC has also been issued against him by the Ld. Trial Court.

16. The above facts appearing on record which are very serious in nature, prima facie suggest that the sexual relations were established with the prosecutrix by the petitioner without her consent and under threat. She was forced to marry co-accused Bablu Yadav. There are allegations that complainant was kept in illegal confinement at Flat

no.263, Pocket B, Ground Floor, Narela, where co-accused Bablu Yadav and petitioner forcibly committed sexual intercourse with her. The petitioner is also absconding and not joining the investigation and proceedings under Section 82 Cr.PC have been initiated against him. In these circumstances, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed.

BRIJESH SETHI, J

JANUARY 22, 2020

Amit