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

+ CRL. M.C. 1485/2020
CRL.M.A. 7002/2020 (Exemption)
CRL.M.A. 7003/2020 (Exemption from filing signed and attested affidavit of the paiokar)

SUNAINA SHOKAT ALIPetitioner
Represented by: Mr.Kanwarpreet Singh, Advocate.

versus

STATE & ANR. Respondents
Represented by: Mr. Hiren Sharma, APP for State.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **01.06.2020**

The hearing has been conducted through Video Conferencing.

CRL.M.A. 7002/2020 (Exemption)

Exemption allowed subject to just exceptions.

CRL.M.A. 7003/2020 (Exemption from filing signed and attested affidavit of the paiokar)

1. Affidavit in support of the petition be filed within 72 hours of the resumption of regular Court proceedings.

2. Application is disposed of.

CRL. M.C. 1485/2020

1. Notice. Learned APP for the State accepts notice.

2. At this stage this Court finds no ground to issue notice to respondent No.2.

3. The present petition has been filed by the petitioner/ complainant seeking setting aside the order dated 27th April, 2020 passed by the learned ASJ thereby cancelling the grant of anticipatory bail to respondent No.2 in FIR No. 114/2020 under Sections 328/376/506 IPC registered at PS North Rohini.

4. The order dated 27th April, 2020 passed by the learned ASJ reads as under:

“It is submitted by the IO that she has been calling the complainant as well as her sister since morning and since many days, but they are not responding to the call of the IO. It is further submitted by IO that even sister of the victim refuses to convey the message of the IO to her sister. In these circumstances, it appears that both the victim/ complainant as well as her sister are avoiding the process of law. Keeping in view the current situation and urgency of the present application, the said application cannot be kept pending anymore and is to be decided either way. In these circumstances, submissions in the present bail application has been heard.

It is submitted on behalf of the applicant/ accused that accused has joined investigation with the IO, whenever called. After granting interim protection order, accused has already joined the investigation and the same has been admitted by the IO herself. It is further submitted that the other relevant documents/ instrument has been already handed over to the IO in the present matter. It is further submitted that no further custodial interrogation of the present accused is required.

It is submitted by the Ld. APP for the State/ IO that complaint was registered on the allegations of prosecutrix that on 17.03.2020 she went to the clinic of accused for check up where she was offered cold drink by him and she lost her consciousness after taking cold drink. Thereafter accused exploited her sexually and threatened her of dire consequences.

As per the report of IO the CDR of both victim and

accused has already been obtained. Accused has already joined investigation. Further, there were exchange of numerous messages and whatsapp calls between the victim and the accused. Mobile phone of the both the victim and accused has already been sealed. No explanation advanced on behalf of the complainant as to how she had ordered pizza even in condition of intoxication as she is avoiding the process of law. In these circumstances, it appears that there were friendly relation between the victim and accused person. Moreover, victim tried to engage a counsel even before filing of present FIR, also create reasonable doubt over victim version. Accused has already provided all the relevant CCTV footage and is cooperating in the investigation.

Keeping in view the overall facts and circumstances of this case, it is ordered that the applicant/ accused, in the event of arrest, be released on bail on furnishing of personal bond in the sum of Rs.25,000/- with one surety of the like amount. The application stands disposed off accordingly.”

5. The petitioner seeks cancellation of bail on the grounds as noted in Paras 7, 8, 9, 10 and 11 of the petition. According to the petitioner the accused obtained bail by misleading the Court by playing fraud with utmost dishonest intention. It is further stated that the applicant was not informed from the I.O. Inspector Usha Rani and was deprived the right to oppose the bail application. It is thus evident that Inspector Usha Rani made the submissions before the learned ASJ in connivance with the respondent No.2.

6. Learned APP for the State has informed this Court that on 25th April, 2020 the Investigating Officer had informed the complainant through her sister on mobile phone which fact is recorded in DD No. 19B regarding the pendency of the anticipatory bail application of the respondent No.2. Further, even on 27th April, 2020 vide DD No. 14B at 9.00 AM in the

morning information was given to the complainant through her sister on mobile phone. Learned APP for the State has also shown screen shot messages. Even on 24th April, 2020 besides the other messages the investigating officer has Whatsapp the communication to the sister of the petitioner/ complainant intimating that the petitioner's phone is unreachable and the bail application is listed on 27th April, 2020. This message was repeated on 25th April, 2020 giving the number of the Court where the bail application was listed on 27th April, 2020.

7. It is thus evident that sufficient compliance of the Guidelines of the Court that 'survivor of sexual offence should have an obligatory say in the bail of the accused' has been afforded and if the complainant/ petitioner chooses not to appear, the order of the learned ASJ cannot be faulted with.

8. The complainant/petitioner also expresses her apprehension that by enlarging respondent No.2 on bail there is threat to the life of the petitioner and her family members. However, there is no material on record to substantiate the apprehension nor is there any application that after the grant of anticipatory bail the respondent No.2 has ever misused the said concession.

9. Learned counsel for the petitioner/complainant states that the statement of the complainant have not been recorded under Section 164 Cr.P.C. as yet. However, the said fact has been recorded by the learned ASJ.

10. Learned APP has also brought to the notice of this Court that at least two messages were sent to the complainant through her sister's phone on 22nd March, 2020 and 23rd March, 2020 requesting her to get her statement recorded under Section 164 Cr.P.C.

11. A perusal of the impugned order shows that during investigation it has been revealed from the CDR that the victim and accused were exchanging numerous messages and Whatsapp calls. Mobile phones of both the victim and accused have already been seized and it is not understood as to how complainant could order a Pizza when the allegations are that she was in a condition of intoxication.

12. From the facts noted above it is evident that the petitioner has filed the present petition stating incorrect facts. However, at this stage this Court is refraining from issuing any notice to the petitioner for making false statement in the petition that she was not informed about the hearing of the bail application.

13. Considering the facts noted in the impugned order and that the respondent No.2 has not only joined the investigation but also handed-over his mobile phone as also provided the relevant CCTV footages, this Court finds no error in the impugned order.

14. Petition is dismissed.

15. Copy of the order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JUNE 01, 2020
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