

via Video-conferencing

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

+ BAIL APPL. No.1118/2020

BHASKAR SHARMA @ BHASKAR BHARDWAJ

..... Applicant

Through: Mr. Kedar Yadav, Advocate.

Versus

STATE OF DELHI

.... Respondent

Through: Mr. Ashok Kumar Garg,
APP for the State.

Mr. Davinder Hora, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **18.06.2020**

The applicant is an undertrial in case FIR No.90/2019 dated 08.05.2019 registered under sections 328/376/506/34 IPC at PS: I.P. Estate, Delhi and has been charge-sheeted under sections 376-D/328/345-D/506/34 IPC.

2. By way of this application, the applicant seeks interim bail for a period of 45 days. The ground urged for interim bail is that the applicant's mother has undergone surgery, and that while an application for interim bail was moved before the learned Additional Sessions Judge prior to the date of surgery, the application was not

decided before that date and was subsequently dismissed *vidé* order dated 27.05.2020. In the circumstances, the applicant prays that, at this stage, he be granted interim bail to look after the post-surgical needs of his mother.

3. Mr. Kedar Yadav, learned counsel for the applicant submits that the applicant's mother is a divorcee and lives with her parents, namely the applicant's maternal grandfather and grandmother, who are themselves aged about 75 years and 72 years respectively with attendant medical issues ; and that there is no other person to look after his mother recuperating at home.

4. In support of his contentions, the applicant has filed his mother's prescriptions and records from Fortis Hospital, Vasant Kunj, New Delhi to evidence that on 14.05.2020 the doctor had advised her surgery; that she was admitted to the hospital on 22.05.2020; and the surgery was scheduled for 23.05.2020. The surgery, being 'anterior cervical discectomy with fusion C-6 and C-7, was performed on 23.05.2020, whereafter the mother was discharged from hospital on 26.05.2020. The applicant has also filed medical papers to show that his maternal grandmother suffers from bilateral osteoarthritis in the knees and had undergone knee replacement surgery in April 2017. It is also recited in the application that the applicant's maternal grandfather is aged about 75 years and is a heart patient. It is further stated that the applicant's only maternal uncle had died an unnatural death long time back.

5. Mr. Yadav submits that first, there was delay in the Investigating Officer filing status report before the learned ASJ; and subsequently a report came to be filed stating that the applicant's

mother had already been discharged; whereupon the learned ASJ dismissed the interim bail application on the basis that the ground for interim bail no longer survived, also observing that in any case the applicant's maternal grandmother was available to look after the applicant's mother. Mr. Yadav submits that the applicant's need to be beside his mother even after surgery is equally important, since his mother requires to go through follow-up treatment and care, which only the applicant can help her with.

6. Notice in the matter was issued on 04.06.2020 and time was granted to the State to file status report. On 08.06.2020 status report was filed confirming that the applicant's mother had undergone surgery on the date and at the hospital as indicated by the applicant; and that the doctor had specifically advised that after surgery the applicant's mother requires one attendant to take care of her.

7. It was also urged by Mr. Yadav that co-accused Raj Kumar, who the applicant claims is the main accused in the matter, had been granted interim bail by a Co-ordinate Bench of this court. Subsequently however, it is pointed-out that an application made by Raj Kumar for extension of interim bail has been rejected by a Co-ordinate Bench of this court for the reason that certain medical certificates filed in support of Raj Kumar's plea were found to be fake.

8. Mr. Davinder Hora, learned counsel for the complainant has also appeared and has been heard at the video-conference hearings on 08.06.2020 and on subsequent dates ; and has opposed grant of interim bail on the basis *firstly*, that the parents of the prosecutrix had received threats from the accused persons on multiple occasions and

that two non-cognizable offence information reports (NCRs) and a first information report (FIR) had been registered with regard to such threats. *Secondly*, it was urged on behalf of the complainant, that the deposition of the prosecutrix was yet to be completed; that the next date of hearing before the Sessions Court was 22.07.2020; and that therefore, it was not desirable that the applicant be granted interim bail. Thereafter the matter was heard on 11.06.2020 and 16.06.2020, when opportunity was granted to the complainant to file copies of the NCRs and the FIR in respect of the alleged threats extended by the accused persons, which have now been placed on record.

9. During the course of hearing today, Mr. Hora has placed reliance upon NCRs dated 15.05.2019 and 20.05.2019 registered at PS: Paschim Vihar (West) and PS: Jama Masjid respectively, both alleging offences under section 506 IPC. Mr. Hora contends that as recited in the NCRs, the prosecutrix's parents had received threats from a certain cell phone number 7039360237 which, according to counsel, were at the instance of and in the context of prosecution pending against the accused persons. Mr. Hora has also placed reliance upon FIR No.228/2019 dated 21.05.2019 registered at PS: Paschim Vihar (West) under sections 195A/506/507 IPC, which arises from a complaint made to the then Home Minister for taking action against police officers, who the complainant had alleged, were not taking steps against the accused persons to stop them from threatening the complainant's family.

10. It is noticed that none of the accused persons in the present FIR, muchless the applicant, is named in the NCRs dated 15.05.2019 and 20.05.2019 or in the FIR dated 21.05.2019. Moreover, on being

queried, Mr. Hora has conceded that no further action was taken, nor any proceedings initiated, pursuant to the NCRs and the FIR; and also that there is no confirmation yet that the cell phone number from which the alleged threats were received belonged to any of the accused persons; or even that such threats were extended on behalf of the accused persons.

11. Mr. Hora has also relied upon order dated 12.06.2020 made in Bail Appl. No.1153/2020 filed by co-accused Raj Kumar, by which order a Co-ordinate Bench of this court has refused to extend the interim bail granted to the said co-accused for 02 months *vidé* order dated 08.05.2020 made in Bail Appl. No.863/2020. However, a perusal of order dated 12.06.2020 shows that the court declined extension of interim bail for the reason that certain medical records filed by co-accused Raj Kumar were suspect.

12. It is also pertinent to note that while Mr. Hora has placed strong reliance upon the NCRs and the FIR relating to alleged threats in the present case, no reference whatsoever was made to the said reports while opposing the extension of interim bail of co-accused Raj Kumar, although from the text and tenor of the said reports, they appear to point not only to the applicant but to both co-accused, though without naming either of them.

13. In the foregoing circumstances, this court is unable to give much credence or weightage to the allegations contained in the said reports.

14. It is important to note on the other hand, that the medical records relating to the applicant's mother filed in support of the present application, have been duly verified by the Investigating

Officer and have been confirmed in the status report as being genuine and authentic.

15. Nominal roll dated 10.06.2020 received from the jail shows that the applicant has been in judicial custody since 31.08.2019 and has accordingly spent about 09 months in prison as an undertrial; and that his jail conduct is satisfactory. In the status report dated 'nil' filed in the matter, the State has also confirmed that charge-sheet against the accused persons has already been filed, meaning thereby that investigation in the matter is complete.

16. Upon being queried by the court, counsel for the applicant as well as the complainant have confirmed that while the complainant/prosecutrix resides in Paschim Vihar, the applicant lives many kilometres away in Chhatarpur. Mr. Yadav has also offered that if so directed by the court, the applicant shall not visit the locality where the complainant/prosecutrix resides.

17. Upon a conspectus of the foregoing facts and circumstances, this court is persuaded to grant to the applicant *interim* bail for a period of 45 (forty-five) days from the date of his release, subject to the following conditions:

- a. The applicant shall furnish a personal bond in the sum of Rs.50,000/- with one local surety in the like amount to the satisfaction of the Jail Superintendent ;
- b. The applicant shall not leave the State of Delhi without permission of the court and shall *ordinarily* reside in his place of residence as per prison records;
- c. The applicant shall present himself before the Investigating Officer/SHO PS: I.P. Estate every Tuesday between 11 am and 11:30 am to mark his presence.

However, the applicant shall not be kept waiting at the police station for more than one hour for this purpose.

- d. The applicant shall furnish to the Investigating Officer/ SHO a cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times ;
- e. If the applicant has a passport, he shall also surrender the same to the Jail Superintendent;
- f. The applicant shall not contact nor visit nor offer any inducement, threat or promise to the first informant/ complainant or to any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that would prejudice the proceedings in the matter. Specifically, the applicant shall not visit the locality of Paschim Vihar;
- g. Upon expiry of the period of interim bail, the applicant shall duly surrender before the concerned Jail Superintendent.

18. Nothing in this order shall be construed as an expression on the merits of the pending matter.

19. The application stands disposed of.

ANUP JAIRAM BHAMBHANI, J.

JUNE 18, 2020

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