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

+ **BAIL APPLN. 1370/2020**

SURAJ MALHOTRA

..... Petitioner

Through: Mr Rajat Katyal, Advocate.

versus

THE STATE OF DELHI

..... Respondent

Through: Ms Kusum Dhalla, APP for State with
ACP Kumar Abhishek, PS Moti
Nagar.

Ms Pallavi Kansal, Advocate for
complainant along with Ms Poonam,
complainant in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.07.2020

[Hearing held through video conferencing]

VIBHU BAKHRU, J

1. The petitioner has filed the present petition seeking bail in FIR No.0230/2019 under Section 498A/406/377/354(A)/34 of the Indian Penal Code, 1860 (hereafter 'IPC') registered with PS Moti Nagar.

2. The said FIR was registered on 14.05.2019 at the instance of the petitioner's wife (hereafter 'the complainant'). She had made a complaint dated 19.12.2018, with CAW Cell West District, Delhi and the same was registered on 20.12.2018.

3. In her complaint, the complainant stated that she and petitioner were married on 20.04.2018. The family consisted of six persons: petitioner's maternal grandmother (*nani saas*), her brother-in-law (husband's brother 'Dheeraj'), his wife (Ruby), their son (Gaurav), the complainant and her husband (petitioner herein). She stated that after her marriage all of them resided at a flat bearing 13-A Silver Creek II, Zirakpur, Punjab. She alleged that after her marriage, her in-laws started harassing her for dowry. She alleged that they would taunt her by retorting, what she had brought (*tu lekar hi kya aayi hai*). She alleged that the petitioner (her husband) was influenced by his brother, Dheeraj, and his sister-in-law, Ruby and would join them in abusing her and beating her. She was treated as a maid in the house and they made incessant dowry demands for cash and a car.

4. She alleged that on several occasions, the petitioner would consume alcohol, beat her and forcibly established physical relations with her. A perusal of the original complaint indicates that the expression 'physical relationship' was qualified by inserting the word 'immoral' (*anaitik*). She stated that her sister-in-law, Ruby, would find some fault in her household work and on that pretext pick up a quarrel with her. Other family members would also joined her in quarrelling with complainant. She alleged that her brother-in-law, Dheeraj, had an evil eye on her (*nazar mujh par theek nahi thi*) and on several occasions he had also physically teased her (*sharirik chedkhani*). She stated that he crossed his limits on 27.07.2018 when on finding her alone, he attacked her honour (*meri ijjat par hamla kiya*). She stated that she informed Ruby about the incident but she in turn abused her; raised her hand on her and removed her from the house. She also alleged

that Ruby also threatened to kill her. She alleged that she was danger from them and, therefore, legal action should be taken.

5. It is relevant to note that the FIR did not contain any allegation of any offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter SC/ST Act).

6. After registration of her complaint, proceedings were commenced by the CAW Cell and efforts were made to ascertain if the parties could reconcile their disputes. However, since they could not do so, the FIR in question was registered.

7. Thereafter, the complainant's statement under Section 164 of the CrPC was recorded on 23.05.2019. In her statement, she stated that she married the petitioner on 20.04.2018 according to Hindu Rites and her family members had given dowry as per their standing. She specified that the same included cash, gold, clothes, etc. She stated that thereafter for some days everything was fine but when she returned from her paternal home on 31.05.2018, the petitioner's brother (Dheeraj) and his wife (Ruby) as well as the petitioner's maternal grandmother started taunting her regarding dowry. She stated that the petitioner also started taunting her and demanding a car. In addition, she stated that because she belongs to a SC caste, the family members (accused) also started abusing her and making casteist remarks. She alleged that the petitioner (her husband) would consume alcohol and forcibly have sex with her in a wrong manner (*zabardati galat tarikey se sex kartey thy*). On her refusing the same, he would abuse and beat her. She stated that on her sister-in-law, Ruby,

inciting the petitioner, he would beat her. She alleged that Dheeraj would keep looking for opportunities to touch her in a wrong manner. She alleged that on 27.07.2018 when she was alone in her house and was washing utensils in the kitchen; Dheeraj, on finding her alone, had approached her from the rear and had attempted to hug her. She asked him to leave her but he caught hold of her hand and also blocked her feet. She alleged that he picked up a knife that was lying on the kitchen slab and asked her to keep quiet. She stated that she became scared. She alleged that he caught hold of her and took her to the bedroom; he lied down on top of her and touched her private parts. She further alleged that he also attempted to remove her lower apparel but she resisted the same by moving her feet. At that time, somebody rung the doorbell and Deeraj left her to open the gate. She alleged that he threatened her not to mention the incident to anyone. She stated that in the evening she narrated the incident to the petitioner but he told her to keep quiet. She stated that on 29.07.2018 her sister-in-law, Ruby returned home and on 30.07.2018, she found an opportune moment to inform her of the said incident. However, before she could do so, Ruby picked up a quarrel with her on the pretext of finding some fault with her household work. She stated that the petitioner also sided with Ruby. She stated that she continued to do her work but when Ruby stated something wrong about her father, she tried to call 100 but the petitioner cut the phone and snatched the same from her hand. She stated that such quarrels became a daily affair. She further stated on 05.08.2018, she told her sister-in-law, Ruby, about Dheeraj's actions but in turn, the family members started fighting with her. They beat her and told her to leave the house. She stated that she returned to her paternal home on that date.

8. It is relevant to note that there is nothing in her statement recorded under section 164 CrPC that would indicate that any offence under the SC/CT Act was committed against the complainant. There is no allegation that the petitioner had been publicly humiliated by any casteist remark. The allegation of addressing the complainant by a derogatory casteist term was made in the context of the conduct of the accused towards the complainant within the confines of their residence.

9. It is apparent from the above that the complainant had married the petitioner on 20.04.2018 and had left the household on 05.08.2018. During this brief period of three and a half months, she had also visited her paternal home for approximately fifteen days in May, 2018 and one week in July, 2018. The complainant, who has joined the proceedings submitted that she may have gone to the parents on another occasion as well.

10. It is also apparent that there are disputes between the complainant, the petitioner and his family members regarding certain properties. On 7.10.2018 – that is much prior to the complainant making the complaint – her sister-in-law, Ruby, had filed a complaint with the SHO, Zirakpur, Punjab against the complainant and the petitioner. In her complaint, Ruby stated that she was working with HDFC bank and was residing at flat no.13A, Silver Creek II, Lohgad Road, Zirakpur, Punjab. She stated that after complainant's marriage with the petitioner, she started residing with them at Zirakpur. She alleged that after some time the complainant's behaviour towards her and other family members changed and the complainant started using abusive language and harassing her and her husband for their properties. She also alleged that the behaviour of her

brother-in-law (the petitioner) changed towards her husband and he also started harassing him in one way or the other. She alleged that on many occasions, the complainant had threatened her in presence of her husband that she would harm herself and implicate her in some fabricated case in order to ruin her career. On one day, the complainant had picked up a quarrel with her and had threatened to come to her office and insult her in front of her colleagues. She stated that thereafter, they had agreed that for their better future, the complainant and petitioner would take accommodation on rent and live separately from them. And after this settlement on 05.08.2018, the complainant went to Delhi to her parental home as she claimed that she was suffering from a cyst in her uterus. In the meantime, the petitioner searched for a separate accommodation on rent. In her complaint, Ruby alleged that even during the complainant's stay in Delhi, the complainant would regularly call her and her husband and threatened her that she would ruin her career as well as her husband's life. She stated that her brother-in-law (the petitioner) had shifted to some other place and now the complainant was threatening her and her husband to enter the house and to implicate them in some criminal case. She stated that in view of these threats and harassment they were living in a constant fear. She requested the police to take necessary action to stop the petitioner or his wife entering their flat forcibly.

11. It appears from the above complaint that Ruby was apprehensive that the complainant would forcibly enter their premises and she did not desire the same.

12. Ruby also filed a civil suit against Ms 'P' and the petitioner (Civil

Suit No.138/2018 in the court of Civil Judge (Senior Division), Kharar, *inter alia*, praying for a permanent injunction restraining the complainant and the petitioner from entering or causing interference in her peaceful possession of the property bearing flat no.8-B, first floor, SBP Homes situated at Village Chajjumajra Tehsil Kharar in any manner. By an order dated 12.10.2018, the court granted an *ad interim* order restraining the complainant and the petitioner from dispossessing Ruby from the suit property or forcibly interfering in the peaceful possession of the same.

13. The petitioner claims that the complainant had made the complaint to CAW Cell (resulting in the FIR in question) as a counterblast to the aforementioned proceedings initiated by Ruby. The learned counsel appearing for the petitioner earnestly contended that during the counselling proceedings the complainant had desired to live together with the petitioner and the petitioner had agreed to live in a separate rented accommodation with her. However, this was not acceptable to the complainant who insisted that they reside in the same premises as they were previously residing. The learned counsel for the complainant, confirms the same. She submitted that although the complainant is desirous of continuing her marital relationship and reside in the company of the petitioner at the flat where she was residing earlier, but she is not willing to reside in a rented accommodation at an unfamiliar place.

14. It is relevant to note that prior to the filing of the chargesheet, the petitioner filed an application (Bail Application No.2269/2019) in the court learned ASJ seeking anticipatory bail. The said matter was taken up by the court on 17.09.2019. In its order, the court noted the learned Additional

Public Prosecutor's submission that the petitioner and his brother had not joined the investigations and that *istridhan* was yet to be recovered. And, rejected the petitioner's plea for anticipatory bail. However, in addition, the court also issued the following directions:

“SHO concerned is also directed to invoke the provisions of SC/ST Act against the accused persons. In view of her statement recorded under Section 164 CrPC”.

15. The learned counsel appearing for the petitioner had submitted that the said direction was wholly warranted and without jurisdiction. This Court finds the said contention merited. There was no occasion for the learned ASJ to pass any such directions. First of all, there were no allegations that any offence punishable under the Scheduled Castes and SC/ST Act was committed. The complainant had not made any allegation of any casteist remarks being made against her in her complaint dated 19.12.2018. However, in her statement recorded under Section 164 of the Cr.PC, she had alleged that the accused had started making casteist remarks against her. However, this was in context of their domestic conduct towards her; there were no allegations that the complainant had been humiliated publicly in any manner. Secondly, as on 17.09.2019, a chargesheet had not been filed. The Learned ASJ was considering an application for anticipatory bail in the FIR in question. There was no occasion for the learned ASJ to give any directions regarding further investigation as that matter was not before the court.

16. In view of the said directions, another statement of the complainant was recorded on 15.10.2019. The said statement is annexed as annexure P-7

to the present petition. The said statement runs into ten pages. A plain reading of the said statement indicates that there has been considerable improvement in the allegations initially made by the complainant. She now alleged that in July 2018, her husband had on several occasions attempted to have anal sex with her. She also claimed that he had forcible oral sex with her. However, even in this statement there were no allegations, which would indicate commission of an offence punishable under the SC/ST Act. The matter did not stop here.

17. On 16.10.2019, once again a supplementary statement of the complainant was recorded. There was no reason for a second statement to be recorded immediately after the complainant's lengthy statement was recorded a day earlier. However, the opening paragraph of the statement indicates that the complainant had stated that she was not feeling well on 15.10.2019, when her statement was recorded. She claimed that she was suffering from a headache on that date and consequently, she had left out mentioning certain issues. She now stated for the first time that the accused had made a demand of ₹5 lakhs and a large car made from her. She stated that she had gone to her paternal home on 04.07.2018 and when she was returning back Ruby had told her that this time bring ₹5 lakhs and a big car. She stated that on her return on 11.07.2018, she informed them that it was not possible to fulfil their demands. She alleges that on being told so her Dheeraj and the petitioner started beating her. She stated that thereafter, on one instance, it also happened that the petitioner and his brother, Dheeraj came to beat her and she escaped them and went to the balcony. She alleged that both of them followed her and were screaming a casteist derogatory

term (*Churi Chamaran*) against her. She stated that this was seen and heard by passersby and a large crowd had gathered below the balcony. However, she did not recognize any of them. Mr Katyal, learned counsel appearing for the petitioner submitted that this statement was recorded only to implicate the petitioner and other accused in a case involving an offence under the SC/ST Act and no such allegation was made by the complainant prior to 16.10.2019.

18. This Court also pointedly asked the learned APP as well as the counsel for the complainant whether any such allegation had been made by the complainant prior to this date. Ms Dhalla, learned APP, fairly stated that no allegation regarding the accused shouting derogatory terms in a balcony had been made prior to the said date. But she also stated that the complainant had made an allegation that casteist remarks were made against her during the counselling sessions. The learned counsel appearing for the complainant stated that the complainant had never gone to the balcony because the accused would never allow her to go outside or leave the house.

19. The complainant has been improving her case with successive statements. It is also material to note that she had filed the complaint on 19.12.2018, that is, almost five months after she had left the petitioner – allegedly against her will – and gone to her paternal home. As noticed earlier, she remained in the company of the petitioner approximately for three and a half months and during this period she had gone to her paternal home at least on two occasions for a period exceeding three weeks (from mid may to 31.05.2018 and 04.07.2018 to 11.07.2018) as it is discernable from her statements, which are on record. The complainant further stated

that she may have gone to her paternal home on one other occasion as well. It is also apparent that there is some issue regarding properties, which are claimed by the petitioner's sister-in-law, Ruby, as is evident from the fact that she had filed a complaint dated 07.10.2018 with SHO Zirakpur and also filed a Civil Suit (Civil Suit No.138/2018 in the court of Civil Judge, Senior Division, Kharar).

20. There is no dispute that the petitioner and his family knew the complainant belonged a Scheduled Caste prior to their marriage. It is also not disputed that the complainant's marriage with the petitioner arranged with the assistance of one Raja, who was a common friend of Dheeraj and the complainant's brother. There is no allegation that the petitioner's family had any reservation regarding the petitioner's alliance with the complainant on account of her caste.

21. Considering the above and the manner in which the complainant has been improving her case over a period of time, this Court is unable to place any confidence in her statements. The evidence in this matter is yet to be led and therefore at this stage this Court is refraining from making any further observations. However, at this stage this Court is of the view that there may be reasonable grounds for the accused to prevail in the present case.

22. The charge sheet has already been filed.

23. Considering the above, this Court considers it apposite to allow the present petition. The petitioner would be released on bail on his furnishing a Personal Bond in the sum of ₹10,000/- to the satisfaction of the concerned Jail Superintendent. This is also subject to the following further conditions:-

- a) the petitioner shall provide a contact number and ensure that he is reachable on it at all times;
- b) the petitioner shall not contact the complainant or any of her family members;
- c) the petitioner shall ensure that if he changes his address, he shall duly communicate to the same to the IO.

24. It is clarified that all observations made by this Court in this order are only for the purpose of considering this petition and shall not influence evaluation of the prosecution's case on merits.

25. A copy of this order be communicated to the concerned jail authorities electronically.

VIBHU BAKHRU, J

JULY 13, 2020
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