

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1845/2020**
MINAKSHI DAGAR Applicant

Through: Mr. Janak Raaj Rana, Adv.

versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP for
State with SI Lalit Kumar, PS
Paharganj,
Complainant in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **24.07.2020**

The applicant vide the present application seeks the grant of anticipatory bail in relation to FIR No. 595/2014, PS Paharganj under Section 376 of the Indian Penal Code, 1860 whilst assailing the impugned order dated 18.07.2020 of the learned ASJ-02 (Central) THC, Delhi.

In terms of order dated 23.07.2020, the status report has been submitted by the State.

On behalf of the applicant it has been submitted that the applicant has been falsely implicated in the instant case and that the applicant is not at all required for custodial interrogation; that two of the main accused in the instant case Pradeep and Sunny are on bail and that thus, the applicant on the ground of parity is entitled to be released on anticipatory bail. It has been submitted on behalf of the applicant that no overt act is attributed to the applicant in the FIR in the instant case nor even in the statement under

Section 164 of the Cr.PC, 1973 of the prosecutrix recorded on 22.11.2014 in relation to the alleged incident on 19.11.2014. It has further been submitted on behalf of the applicant that the applicant was always available and has been residing in Delhi for the last 20 years and that the complainant/ the prosecutrix and the applicant have been friends for years as also brought forth through the averments made in the FIR and through the averments made in statement under Section 164 of the Cr.PC, 1973 of the prosecutrix and despite the same, no efforts have been made by the Investigating Agency to join the applicant to the investigation and as soon as the applicant had learnt of her being required for investigation through her mother as informed by the police, the applicant has joined the investigation of the case.

Reliance is also sought to be placed on behalf of the applicant on a catena of verdicts i.e. ***Shri Gurbaksh Singh Sibbia and Ors. Vs State of Punjab* (1980) 2 SCC 565** of the Hon'ble Supreme Court, ***Siddharam Satlingappa Mhetre Vs State of Marashtra & ORs.***; **Crl.A.No.2271/2010 arising out of SLP(Crl) No.7615/2009** of the Hon'ble Supreme Court, ***Court on its Motion Vs Central Bureau of Investigation* 2004 (72) DRJ 629** of this Court, ***Rahman Vs The State of U.P.***; **Crl.A.No.178/1970** of the Hon'ble Supreme Court decided on 27.08.1971 and ***Mr.Syed Parvez Vs State of Karnataka Criminal Petition No.9068/2017*** of the Hon'ble Karnataka High Court here to contend that the applicant not being required for any custodial interrogation, taking into account the factum that no notice under Section 160 of the Cr.PC, 1973 was issued to the applicant to join the investigation and no action was also taken by the Investigating Agency under Section 82 of the Cr.PC, 1973, there being no likelihood of the applicant to abscond, the applicant be released on anticipatory bail and that

the applicant is always available to join the investigation of the case.

On behalf of the State, the application seeking grant of anticipatory bail is vehemently opposed with it having been submitted on behalf of the State that the FIR itself indicates the name of the applicant, with the statement under Section 164 of the Cr.PC, 1973 of the prosecutrix bringing forth the role of the applicant and that there were efforts that have been made repeatedly by the Investigating Agency to trace out the whereabouts of the applicant but she could not be traced out, whereafter she was traced out only after going through the FB account profile of the applicant and whereafter, the FB Account of another person named Gunjan Gandhi in the friend list of the applicant was also traced out and thereafter her son was enquired and thereafter it was learnt that the persons on the FB were also not in touch with the applicant and were not aware of her whereabouts but thereafter, a call from the mobile no.8383097364 was received who introduced herself as the mother of the applicant and thereafter the CAF of the said mobile number was sought and it was learned that the address of the said mobile number is 4-1/5, Delhi Cantt., Gopinath Bazar, South-West, Delhi, as a consequence of which, a raid was conducted at 15.07.2020 for the arrest of the applicant but it was found that there was no such address as 4-1/5, Delhi Cantt., Gopinath Bazar, Delhi and that the right address of the applicant was 41/5, Delhi Cantt., Gopinath Bazar, Delhi and the Investigating team thus reached to the said address but the applicant was not found there.

It has been submitted on behalf of the State that during the course of investigation, the prosecutrix had appeared with her spouse and informed that she and her spouse were threatened by the accused persons through their

known associates and she produced a copy of the FIR No.179/2020, PS Nabi Karim, under Sections 354/509/34 of the Indian Penal Code, 1860 and that the statement of the complainant thereof under Section 164 of the Cr.PC, 1973 is to be recorded. It has been submitted on behalf of the State further that the role of the applicant in the commission of the offence is heinous and vital and that the applicant had caught hold of the hands of the prosecutrix at the time when the co-accused Pradeep forcibly inebriated her against her will and for the fixation of the identification and further proceedings with investigation, the presence of the applicant is required for custodial interrogation. *Inter alia* it has been submitted on behalf of the State that there is no parity qua the aspect of grant of anticipatory bail to the applicant qua another co-accused Sunny and Pradeep who have been released on bail after incarceration.

A submission was made on behalf of the applicant that in relation to the contention raised on behalf of the State, the proceedings in FIR No.179/2020, PS Nabi Karim, under Sections 354/509/34 of the Indian Penal Code, 1860, there was no role whatsoever attributed to the applicant and that the applicant has not threatened the complainant i.e. the prosecutrix.

On a consideration of the submissions made on behalf of either side without any observations on the merits or demerits of the trial that would take place, the averments that are made through the FIR and the averments made in the statement under Section 164 of the Cr.PC, 1973 of the prosecutrix dated 22.11.2014 recorded in relation to the alleged incident of 19.11.2014 brings out to the effect that the applicant had allegedly caught hold the hands of the prosecutrix whilst the co-accused persons inebriated her and subsequently the complainant was allegedly raped by the co-accused

Pradeep and the prosecutrix had found herself when she woke up in a nude condition and found the co-accused Pradeep also in nude condition and also found the applicant and another co-accused Sunny sleeping there in the same place. The statement under Section 164 of the Cr.PC, 1973 of the prosecutrix is also virtually to the similar effect and further states to the effect that when the complainant had made enquiry from the accused persons as to what had happened to her inclusive of the present applicant, they had all laughed at her and at the situation.

As the said submissions that have been made through the FIR and statement under Section 164 of the Cr.PC, 1973 of the prosecutrix suffice to negate the grant of anticipatory bail to the applicant, as regards the submission that has been made on behalf of the applicant that despite the whereabouts of the applicant being well known to the Investigating Agency and to the complainant, the prosecutrix and despite the prosecutrix and the applicant being friends, there was no attempt made by the Investigating Agency to join the applicant to the investigation, the status report is on the record to the effect that several attempts were made to trace out the applicant but she could not be traced out and she was traced out later.

Undoubtedly, there appears some laxity in relation to tracing out of the applicant by the Investigating Agency but a laxity in the investigation cannot suffice to negate the truth which would have to be ascertained on the anvil of cross examination of the prosecutrix.

Nevertheless, presently, there is no ground whatsoever to grant the anticipatory bail to the applicant and as submitted rightly on behalf of the State, the applicant who is seeking anticipatory bail cannot be equated with those who are granted regular bail after arrest.

The application is rejected.

ANU MALHOTRA, J

JULY 24, 2020

vm