

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

+ **BAIL APPLN. No. 2060/2020**

Judgment reserved on :14.8.2020

Date of decision : 12.11.2020

BINAY KUMAR CHAUHAN

..... Petitioner

Through: Mr. Ramesh Gupta, Sr.
Advocate with Mr. Arun Khatri,
Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for State with ACP Suresh
Chand with the Prosecutrix in
person through Video
Conferencing.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant vide the present petition seeks the grant of anticipatory bail in relation to FIR No. 150/2020 Police Station Timarpur under Section 376 of the Indian Penal Code, 1860. Vide order dated 6.8.2020 it is indicated that the status report that was submitted by the State along with the brief synopsis indicated inter alia that Section 3(1)(r)(s) of The Scheduled Castes and the Scheduled Tribes

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(Prevention of Atrocities) Act, 1989 had also been added apart from Section 376 of the Indian Penal Code, 1860. In the instant case, the prosecutrix joined the proceedings through video conferencing on 7.8.2020 and in as much as she was not assisted by any counsel and stated that she did not have any funds to engage any counsel was provided legal assistance through the Delhi High Court Legal Services Committee. Vide order dated 14.8.2020 it was directed that the applicant be not arrested subject to his not leaving the city and not making any contact with the complainant and the prosecution witnesses and subject to the applicant keeping his mobile phone on at all times and dropping a pin on the Google map to ensure that his location is available to the Investigating Officer and subject to the applicant joining the investigation as and when required by the Investigating Agency till the pronouncement of the orders in the application under consideration.

2. On behalf of the applicant it has been submitted that there is a delay of three years in lodging of the complaint and the FIR with the alleged main incident of sexual intercourse being of the period of dates from 9.5.2017 to 11.5.2017 and that the petitioner met the complainant only once or twice in the month of June 2014 when he had come to Delhi for preparation of competitive examinations and during the period January 2014 to July 2014 stayed at house No. C-358, Nehru Vihar, New Delhi with his friend Dhiraj, and thereafter returned to his hometown and thereafter visited Delhi once or twice which aspect could be ascertained from the said person named Dheeraj and that the petitioner was not even in Delhi on 9.5.2017 when he is alleged to have come into the room of the complainant and threatened her and put

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vermilion/sindoor and allegedly stated that he accepted the complainant as his wife and thereafter made physical relations with her and then also gave her pills for abortion. The applicant submits that in the year 2017 he was a research scholar and was pursuing regular Ph.D. in Sociology and submits that he used to regularly attend classes at TD College, Jaunpur which records can be verified and which college is at a distance of 800 km from Delhi and the factum of the applicant being at Jaunpur on 9.5.2017 can be verified.

3. Inter alia, the applicant submits that on 13.3.2020 he visited the Police Station Timarpur pursuant to a notice issued by SI Neelam of Police Station Timarpur in view of a complaint dated 12.2.2020 made by the complainant and joined the enquiry. The petitioner further submits that the complainant along with her family members was present and pressurized the petitioner to solemnize the marriage to the complainant but the applicant submitted before the police that the allegations levelled against him were false and fabricated and that there was no question of marriage with the complainant whereafter the applicant left the police station and went to the flat of his friend, named, Satish Shukla situated at Nehru Vihar and in the evening the complainant with her family members reached outside the said flat and again pressurized the petitioner to solemnize the marriage with the complainant and when the petitioner refused to get married to her the complainant and her family members threatened that they would implicate the petitioner in a false case of rape.

4. The petitioner has submitted that when the complainant had been harassing and pressuring the petitioner for marriage in the year 2018,

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the petitioner had blocked her number as she used to call him at odd hours and that the motive behind the present FIR is to spoil the career of the petitioner as he has been selected as an Assistant Professor with the Government of Uttar Pradesh and to pressurize him to get married with the complainant. The petitioner has further submitted that all allegations levelled against the petitioner are false and vague and grossly delayed. The applicant further submits that in the complaint in February 2020 made by the complainant which proceedings the applicant joined in March, 2020 there was no allegation of rape and thus it was clear that the allegation of rape levelled against the applicant was an afterthought.

5. The applicant further submits that vide a notice dated 26.7.2020 received by him apart from Section 376 of the Indian Penal Code, 1860, the provisions of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 were also added deliberately though there were no such assertion of any allegation under The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 raised earlier. Inter alia, it is submitted on behalf of the applicant that even on merits under Section 3(1)(r)(s) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the submissions made on behalf of the complainant are not maintainable in as much as the contents of the FIR do not indicate any act committed by the applicant in public view. Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 read to the effect:

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3. Punishment for offences of atrocities

(1) Whoever, not being a member of Scheduled Caste or Scheduled Tribe,-

*(r) intentionally insults or intimidates with intent to humiliate a member of SC/ ST in any place within **public view**;*

*(s) abuses any member of SC/ST by caste name in any place within **public view**;*

6. Reliance is also placed on behalf of the petitioner on the verdict of the Gujarat High Court in ***Dr. Madhulika Samanta v. State of Gujarat***, CrI.M.C. no. 30491/2016 dated 8.1.2019 wherein it was held to the effect:

“Public View means the humiliation must be in front of the members of public. Public means that the persons present must be independent, impartial and not interested in any of the parties”.

with it having been submitted on behalf of the applicant that the said view was reiterated by this Court in ***Daya Bhatnagar V. State***; 109(2004) DLT 915 in relation to the expression “*public view*” . The applicant has further submitted that The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been attracted to bring him within the bar of the applicability of Section 438 Cr.P.C. in terms of Section 18 of the said enactment with it having been submitted that vide the verdict in ***Prithvi Raj Chauhan V. Union of India***, 2020 SCC OnLine SC 159 it has been stipulated vide paragraph 10 of the said verdict by the Hon’ble Supreme Court, to the effect:

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“10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.”

7. Inter alia the applicant submits that there is no likelihood of his fleeing from justice and tampering with the evidence and that he is ready and willing to abide by all terms and conditions that may be imposed on him.

8. The status report dated 6.8.2020 of the State indicates that the complaint dated 12.2.2020 was made by the prosecutrix wherein she requested her friend, the petitioner, to be called to the police station as he was not taking her calls and a notice to join the inquiry was served on the brother of the applicant who joined the police station on 12.3.2020 on the complaint and the statements of the prosecutrix and the applicant herein were recorded and the said complaint was filed on the basis of the statement of the prosecutrix and the applicant, whereafter the complaint/prosecutrix filed another complaint on 26.6.2020 at Police Station Timarpur alleging that she had come in contact with the applicant through a common friend named Geeta whereafter he started meeting in connection with studies as they were both preparing for the Civil Services Examination and in 2017, the applicant proposed to her for marriage but she refused whereafter the applicant allegedly apologized for his acts and requested her to be his friend pursuant to which on 9.5.2017 the applicant came to her room at House No.A-116, Second Floor, Nehru Vihar, New Delhi, threatened

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her to commit suicide and put sindoor on her forehead accepted her as his wife and made physical relations with her on the false pretext of marriage and thereafter stayed with her at the same premises and made physical relations with her for three days, gave her contraceptive pills, returned to his home at Jaunpur U.P. whereafter the applicant allegedly used to come to Delhi and made physical relations with her on the false pretext of marriage but on 5.2.2020 refused to marry her and that on 13.3.2020 at about 7:00 to 8:00 p.m. he called her at the Central Park, Nehru Vihar, Delhi and told her that he would not marry her and when she asked the reason for the same he told her, “ *Tum chamar jaati ki ho, aur chammaar to mere yahan kheto me kaam karte hai, au main chamari se shaadi nahi kar sakta aur na hi mere parvaar wale chammaari se shaadi karenge*”, on the basis of which complaint the FIR was registered under Section 376 of the Indian Penal Code, 1860 at Police Station Timarpur.

9. As per the said status report, the investigation was conducted and the victim was medically examined at the Aruna Asaf Ali Government Hospital wherein it was stated to the effect:

*“the doctor mentioned A/H/O of consensual physical relationship between the alleged & the accused followed by denying to marry her. Victim S, 39/F, unmarried, civil services aspirant staying with her friends in Nehru Vihar, when the guy named Vinay Kumar Chauhan, 35 yr old male, unmarried, met her and slowly proposed her for marriage, when she refused for marriage, he got her married to himself by using sindoor at her house **and she also agreed**. They didn't get married official but*

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had regular sexual relationship just like a married couple, staying from 09/05/17 to 2019. Finally in Sep.2019, he refused for marriage.”

after which the prosecutrix was produced before the Court for recording of the statement under Section 164 Cr.P.C. when she also stated that the applicant had threatened her not to take any legal action against him or he would get her and her mother killed and their dead bodies would also not be found.

10. As per the status report Section 3 (1)(r)(s) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 was also invoked in the instant case.

11. The copy of the statement of the prosecutrix under Section 164 Cr.P.C. dated 2.7.2020 has been placed on record through which statement the prosecutrix had put forth the alleged allegation of rape against the applicant from 9.5.2017 to 11.5.2017 of the applicant having allegedly given her contraceptives and of coming in between thereafter at her place and indulging in sexual relations with her on the premise of a proposed marriage and on the applicant having informed her that he had spoken to his family members and that they had agreed that they would get the applicant and the prosecutrix married as a consequence of which she allowed the applicant to have sex with her.

12. The prosecutrix has further alleged through her statement under Section 164 Cr.P.C. that on 5.2.2020 when she pressurized the applicant to get married, he categorically refused and that she has the entire conversation for the said eight to ten days recorded with her and at that time the applicant also told her that she belonged to the SC/ST

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community and that he would not marry her and that his brother and father did not agree to the marriage and had also stated that persons like chamaars used to work in their farms. It was further alleged by the complainant that on 9.2.2020 between 9 a.m. to 10 a.m. the applicant had telephoned her and he and his father and brother abused her and though she pleaded with the applicant he did not listen to her and called on her on 13.3.2020 at the Central Park, Nehru Vihar, and told her that he would not marry her and though she tried to plead with him again but he reiterated that she belonged to a chamaar jaati and that he would not marry her and also abused and told her that if she would cry then he would kick her and persons collected and she was crying and came back home. Through this statement under Section 164 Cr.P.C., the prosecutrix stated that the applicant was aware of her caste from before and had told her that caste did not matter to him and that he continued to have a sexual relationship with her for a year and has now refused to marry her and has threatened her and her mother with dire consequences.

13. Placed on record is also the copy of the complaint lodged with the Police Station Timarpur on 12.2.2020 by the prosecutrix wherein inter alia she stated that she did not want to lodge any complaint against the applicant and wanted to talk to him and since he was talking to her she wanted him to be called to the police station, as a consequence of which the applicant had come on 12.3.2020 to the Police Station Timarpur and they had had a conversation and arrived at a settlement that they would talk to their family members, to which similar effect is the statement of the applicant on the record that he would speak to his

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family members and pressurize them to agree to the marriage between him and the prosecutrix.

14. Reliance is sought to be placed on behalf of the applicant on the verdict of this Court in Bail Appln. No. 2529/2017 dated 11.7.2018 in the case of Bhushan Lal Khanna V. State to submit to the effect that the prosecutrix in the instant case was a mature lady of the age of 39 years on the date when her statement under Section 164 of the Cr.P.C. was recorded, that the physical relations between her and the applicant had continued as per her own statement from 2017 onwards to 2020 and that there was a complaint that the prosecutrix had made to the Police Station Timarpur dated 12.2.2020 whereafter the applicant was called to the police station and that complaint was filed as reported by the police vide the status report dated 6.8.2020 and that the applicant is not required for any further custodial interrogation and that the record would indicate that the relationship between the applicant and the prosecutrix, if any, were wholly consensual.

15. On a consideration of the submissions that have been made on behalf of either side taking into account the statement under Section 164 of the Cr.P.C. of the prosecutrix dated 2.7.2020 which does not speak of any allegations against the applicant of having made any utterances in “**public view**” qua the caste of the prosecutrix on the date 13.03.2020 at the Central Park Nehru Vihar, Delhi, and having not made any utterances qua the caste of the prosecutrix in “**public view**” after the members of the public collected at the spot, prima facie the provisions of Section 3(1)(r)(s) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not appear to apply as an

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embargo to the grant of anticipatory bail in the instant case. Furthermore, the prosecutrix in the instant case is an educated major who was preparing for the UPSC examinations and was of the age of 39 years when she made her statement under Section 164 Cr.P.C. and as indicated as per her own statement is alleged to have indulged in the sexual intercourse with the applicant from 9.5.2017 onwards till 2020 and stated as per her own statement to have consumed contraceptive pills even though allegedly at the behest of the applicant for indulging into sexual intercourse with the applicant, -all these circumstances prima facie make the allegations levelled against the applicant of forcible sexual relations against the applicant, matters of trial and it does not appear that the prosecutrix was also naïve or gullible especially when the prosecutrix herself states through her statement under Section 164 Cr.P.C. that she had even recorded the conversation between the applicant and herself for a period of 8 to 10 days in the year 2020. In the circumstances, especially where the complaint made by the prosecutrix on 12.2.2020 was also filed on 12.3.2020 because she stated that she did not want any further action and that the parties would have a conversation with their family members in relation to the aspect of marriage between the applicant and the prosecutrix, as already observed hereinabove the aspect of alleged forcible sexual intercourse by the applicant or on the behest of a false promise of marriage are aspects which can be determined only on trial.

16. As there is nothing to indicate that the applicant is required for any further investigation, the applicant in the event of arrest is allowed to be released on anticipatory bail on his filing a bail bond in the sum

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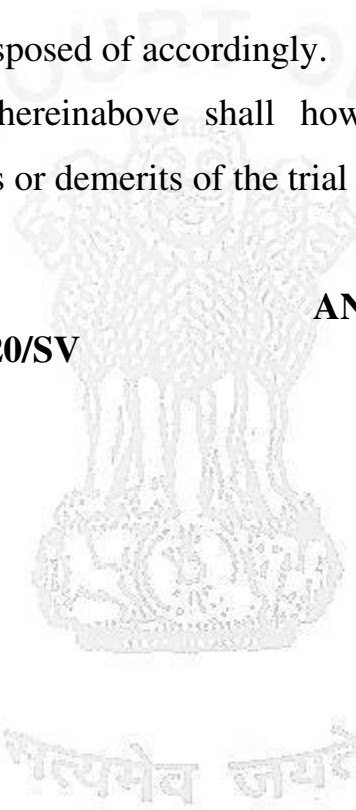
of Rs.5 lakhs with two sureties of the like amount to the satisfaction of the learned CMM, (Central) subject to the further conditions that the petitioner shall not tamper with the evidence in any manner, shall not threaten the witnesses neither himself nor through any associate or any other person and shall not leave the city nor the country without permission of the Trial Court and further shall commit no offence whatsoever.

17. The petition is disposed of accordingly.

18. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place.

ANU MALHOTRA, J.

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