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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.01.2021

Pronounced on: 25.01.2021

+ **BAIL APPLN. 3906/2020 & CRL.M.A. 17997/2020**

SUNIL AGGARWAL Petitioner
Through Ms.Rekha Aggarwal, Adv.

versus

STATE OF NCT OF DELHI Respondent
Through Mr.Amit Chadha, APP for State.
Insp.Prem Chandra Khanduri PS
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Present petition has been filed under section 439 Cr.P.C. seeking regular bail in pursuance to FIR No.58/2020 registered at Police Station Crime Branch for the offences punishable under sections 506/509 IPC & section 67A of I.T. Act.
2. The case of applicant/petitioner is that he is an American Citizen and qualified Software Engineer by profession. He has worked in some of the world's biggest organizations on very senior positions. He has his roots in the society and is not a prior convict. He is a law abiding citizen of the

country and is innocent.

3. Learned counsel for the petitioner submitted that the screenshot annexed by the complainant seems to have been taken by herself, thus, are tampered and forged with an intention to falsely implicate the applicant/petitioner. The IO has confirmed in his status report that he has taken a report from WhatsApp officials in which WhatsApp has only verified that the number belongs to the applicant. The applicant has never denied that the mobile number belongs to him. He is using this mobile number for the last 9 years. At the same time, WhatsApp has not verified that the alleged status was uploaded from the applicant mobile on 16.02.2020. So there is no admissible facts about the applicant posting the alleged WhatsApp status. Moreover, the WhatsApp status remains only for 24 hours and gets deleted automatically by the WhatsApp application thereafter.

4. Further submitted that in order to send and receive status updates, the contacts must have on each other's phone numbers saved on the phone's address books. However, the applicant was arrested from Dehradun on 16.09.2020 where he is residing continuously for more than one year. The applicant is in Judicial Custody since 18.09.2020 which is more than 78

days now in JC.

5. In addition to above, it is submitted that the applicant was never issued any notice under section 41A Cr.P.C. by the concerned authorities and this has caused grave injustice to the applicant.

6. In the case of *Arnesh Kumar vs. State of Bihar*, the Hon'ble Supreme Court held that the IO has to issue notice under section 41A before the arrest in the cases where the punishment is less than 7 years. Not even once the applicant has been investigated or asked to join the investigation for this FIR/offence, thereby raising reasonable doubts on the investigation by the investigating agency. Moreover, the case property like two mobile phones and a laptop have already been recovered by the IO at the time of arrest at Dehradun and has been sent to FSL, however, FSL report is awaited. Nothing more is to be recovered from the applicant.

7. Learned APP has opposed the present petition by submitting that the complainant is Judicial Officer in Delhi and the applicant has uploaded her obscene photographs on whatsapp. Due to this act of the applicant, the image of the complainant has been tarnished and she put to great trauma. Therefore, keeping in view of the serious allegations against the petitioner, the petition deserves to be dismissed.

8. It is alleged in the present petition that the complainant Ms.Anu Aggarwal has gravely misused her official powers for arresting the applicant with her influence as she at the time of filing of the complaint was the immediate head of the Crime Branch, therefore, IO and other Crime Branch officers have obliged her being CMM, Dwarka Courts, Delhi.

9. It is mentioned in the present petition that the applicant and his ex-wife Meenu Aggarwal have some family dispute and the complainant Ms.Anu Aggarwal (CMM) is the real younger sister of Meenu Aggarwal. The applicant got married to Meenu Aggarwal in August, 1998. They went to USA after marriage in September, 1998. Since then they were residing in USA only till the year 2011. Two children were born out of the wedlock and they are now aged 18 years and 15 years. However, sometime in the year 2011, the applicant alongwith his wife Meenu Aggarwal and two children came back to India and were residing in Mumbai. However, his wife filed a complaint under section 498A IPC registered at Police Station Darya Ganj being FIR No.185/2012. The applicant was acquitted by the Trial Court in May 2019, however, the appeal for said case is pending adjudication.

10. It is alleged that another criminal case is hoisted on the applicant to

prevent him from going to USA and perusing the litigation there for children's custody. The applicant had been constrained to file a divorce case in the Family Court, Tis Hazari, Delhi because of the mental and physical cruelty committed by his wife and her family. The applicant was granted decree of divorce on the basis of adultery allegations vide order in 2018.

11. Further alleged that the applicant was also constrained to file a custody case in the Mumbai Family Court for the custody of his two minor children and was granted custody vide order dated 27.05.2015. However, his wife flouted the orders of the Mumbai Family Court and illegally took away minor children to USA. She gave an undertaking to the Court that she will not remove the children from the jurisdiction of the court till the case is decided but she illegally absconded to USA along with the children in the year 2014. Subsequently, NBW was issued against his wife Meenu Aggarwal which is still continuing. She is a fugitive accused within India. Even the High Court of Mumbai dismissed their application to cancel the NBW and ordered that she should produce the children in the court immediately.

12. Case of the petitioner is that to seek revenge from the applicant, his ex-wife Meenu Aggarwal and the complainant in the present FIR Ms. Anu

Aggarwal, who is real younger sister of Meenu Aggarwal, hatched a conspiracy to frame the applicant in the false FIR mentioned above. The whole purpose of this malicious FIR is to accede to the unfair demand of the complainant that all the cases against her sister in USA and India be dropped/withdrawn so that the sister (ex-wife of the applicant) can travel to India with the children whose passport cannot be renewed without the consent of the applicant/father. Moreover, sister of the complainant has got passport of the minor children by forging the signature of the applicant, for which the sister of the complainant is facing criminal charges. The signature forgery complaints against complainant's elder sister are still pending in the American Embassy, New Delhi and with the US authorities in Washington DC, USA.

13. It is submitted during arguments by learned counsel for the petitioner that petitioner will not get any relief from the court below, the complainant being a Judicial Officer. Earlier, a court had refused to hear the bail application of the petitioner. Accordingly, prayed to decide the present petition.

14. It is not in dispute that this Court has power to entertain and decide the present petition.

15. It is worth mentioning here that the photographs annexed by the complainant are neither nude nor with sexual act, however, frame of photos of complainant are with lingerie.

16. Vide order dated 27.11.2020 passed by this Court in Bail Appln. No.2866/2020 granted anticipatory bail to Ajay Aggarwal who is brother of the petitioner by observing as under:

“After sifting through the allegations and material presented before it, this court finds that the following are the most relevant for purposes of the present anticipatory bail application :

- (a) On an overall perspective, it is clear that the offence alleged finds its roots in the matrimonial dispute between the complainant's sister and her ex-husband, who is the present applicant's brother. It is clearly that matrimonial dispute which gives to the allegations in the subject FIR a very shrill tone and tenor. There is stated to be an ongoing bitter custody battle between the applicant's brother and the complainant's sister in relation to their two children;*
- (b) It is the accepted position that the WhatsApp number and account, on and from which, the offending photographs were uploaded, belongs not to the applicant but to his brother, who (latter) is the ex-husband of the complainant's sister;*
- (c) In status report dated 30.09.2020 and in order dated 23.09.2020 made by the learned Sessions Court, dismissing the applicant's anticipatory bail application, it is recorded that even the cell-phones/laptop from which the offending photographs*

were uploaded did not belong to the applicant, which devices have since been recovered from the applicant's brother;

- (d) It is also not denied that at the time when the offending photographs were uploaded on the WhatsApp status of the applicant's brother, the latter was in Dehradun while the applicant was in Delhi;*
- (e) In the FIR there is no specific or pointed allegation against the applicant except that he alongwith his brother uploaded the offending photographs on the brother's WhatsApp status, though it is not disputed that at the relevant time the applicant was in Delhi while his brother was in Dehradun;*
- (f) There is no contest that the applicant is a family man, permanently residing in Delhi, and there is no justifiable basis to believing that the applicant is either a flight-risk or that the applicant would impede the investigative process or subvert the course of law. In any case, the incident complained of dates back to February 2020 and the complaint, though inadvertently dated 19.01.2020 was made on 19.02.2020; and between then and now, no serious effort appears to have been made to arrest the applicant or to require his custodial interrogation;*
- (g) As things stand, no meaningful investigation is proceeding against the applicant; though the applicant's brother has been in judicial custody since 18.09.2020."*

17. In view of the facts mentioned above and the fact that petitioner is in Judicial Custody since 16.09.2020 and all recoveries have been made and trial will take substantial time, however, without commenting on the merits

of the prosecution case, I am of the view that petitioner deserves bail.

18. Accordingly, he shall be released on bail forthwith on the following conditions:

- (a) The applicant shall furnish a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac Only) with one surety of the like amount to the satisfaction of the Trial Court;
- (b) The applicant shall furnish to the Investigating Officer/ S.H.O. a cell phone 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;
- (c) The applicant shall not travel out of the country without prior permission of the trial court;
- (d) The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in investigation or in trial.

19. In view of above directions, the petition is allowed and disposed of.

20. Pending application also stands disposed of.
21. The Judgment be uploaded on the intranet of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 25, 2021
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