

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 06.07.2021

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Pronounced on : 22.07.2021

+ BAIL APPLN. 3651/2020

DR. LATA

.....Petitioner

Through: Mr. Naveen Kr. Raheja, Advocate.

Versus

STATE OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, APP for the State.

Ms. Sunita Arora, Advocate for the victim with victim in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present application has been filed under Section 438 Cr.P.C read with Section 482 Cr.P.C on behalf of the petitioner seeking anticipatory bail in FIR No. 627/2020 registered under Section 377 IPC and Section 6 of the POCSO Act at Police Station Model Town.

2. Briefly stated, the facts of this case are that the present case has been registered on the complaint of Dr. Anju Gurawa. She alleged in her complaint that MS Lata (the present petitioner) visited her home on several

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occasions and always tried to come close to her son (Victim K. Aged 6 Years). Complainant further alleged that the petitioner sexually assaulted her child by pressing the private part of the child, putting her finger in the anus of the child bitten the lips of the child and pinched under his arm pits. Complainant further alleged that petitioner did all this with the child while he was in his father Surrender's custody. Surrender used to take him to play and pick from day care. Her child told all this on 26th of Sep 2020.

3. Complainant further alleged that the petitioner, who is working as assistant professor in Hindi Department of Venkateshwara College is in sexual relationship with Surrender Kumar and with the help and permission of Surrendera Kumar, petitioner used to sexually assault with her child.

4. During the course of investigation victim K was got medically examined vide MLC No 5742 dated 12/10/20 at Dr. Baba Saheb Ambedkar Hospital Rohini Delhi. The statement of the victim U/s 164 Cr.P.C was got recorded in which he corroborated the contents of the complaint. In his statement u/s 164 Cr.PC he stated that all this has been happening to him since he was 3 years old.

5. I have heard Ld. counsel for the petitioner, Ld. APP for the State and Ld. counsel for the complainant who assisted the Ld. APP for the State and perused the Status Report and the records of this case.

6. It is submitted by the Ld. counsel for the petitioner that co-accused who is the husband of the complainant and father of the victim has already been admitted to anticipatory bail. It is further submitted by the Ld.

counsel for the petitioner that the husband of the complainant is a professor in Delhi University and the petitioner is also working in Delhi University and the complainant has apprehension that the petitioner and his co-accused are in affair and in order to take revenge against her husband she has used her minor child and filed this FIR which has been lodged after a gap of 4 years. It is further submitted by the Ld. counsel for the petitioner that the husband of complainant who is the co-accused has already filed a divorce petition in the year 2019 against the complainant. It is further submitted by the Ld. counsel for the petitioner that the petitioner has joined the investigation and nothing is required to be recovered from her. He further submitted that custodial interrogation of the petitioner and sending her behind the bar will serve no purpose.

7. It is further submitted by the Ld. counsel for the petitioner that since the husband of complainant has filed a divorce case against complainant who is suspicious about the affair between the petitioner and her husband, so she is adopting all means to see that the petitioner is not granted anticipatory bail and in order to achieve that purpose she has even filed forged and fabricated medical documents of her minor child which has been got verified by the IO and details have been mentioned in the Status Report.

8. On the other hand, it is submitted by the Ld. APP for the State with the assistance of the counsel for the complainant that the child is aged about 6 years and he could only reveal about the sexual assault upon him by the petitioner in the month of September 2020 which resulted in the delay in lodging the FIR. It is further submitted by the Ld. APP for the state that the

petitioner is the main accused and the offence is grave and serious in nature. It is further submitted by the Ld. APP that in case the petitioner is admitted to bail, there are chances of her threatening the complainant and tampering with the evidence. It is further submitted by the Ld. APP that the petitioner has not been co-operating in the investigation.

9. The statement of the victim was recorded U/s 164 Cr.P.C. and he has corroborated the contents of the FIR and stated that this all has been happening to him since he was 3 years old. The complainant had handed over to the IO copy of the medical treatment papers dated 14.08.2016 and 15.07.2018 wherein it is mentioned that c/o pain Anus & swelling & itching which has been attested by Chikitsa Adhikari Mahatma Gandhi Hospital Bhilwara (Rajasthan). This document was found to be issued by one Dr. Vinita, Medical Officer in Mahatma Gandhi Hospital Bhilwara who is the family doctor of complainant. This document was got verified from Government Hospital Rajasthan in which no such record pertaining to the prescription slip number 22166 dated 15.07.2018 was found.

10. The complainant has thereafter handed over one document of St. Stephan Hospital dated 31.01.2018. Initially, the complainant was not handing over the original document but on the direction of this Court, the original document was handed over to the IO who got it verified from the St. Stephan Hospital, Tis Hazari Delhi and filed a report in this regard. The Medical Supdt. of St. Stephan Hospital, Tis Hazari Delhi stated in the reply in pursuance of notice U/s 91 Cr.P.C that Patient visited private Pediatrics OPD of the hospital on 31.01.2018 for Right Ear pain since 02 days,

History of rigor since 02 days and abnormal behavior since 07 days. Patient was referred for Child Psychiatry Opinion also. Dr. Nirmal Kumar, Senior Consultant and Head of the Department, Pediatrics examined the patient on 31.01.2018. He further stated that the line mentioned “scrotal Swelling 2 days back” in the prescription slip/medical record dated 31.01.2018 has been added/written by some person. This line is not written by the treating Doctor. As per Hospital records the patient was not suffering with Scrotal Swelling as examined on 31.01.2018. So the report of the Medical Supdt., St. Stephan Hospital further goes to show that the prescription slip dated 31.01.2018 again is not a genuine prescription slip issued by the hospital. Rather it also has interpolation and addition of words.

11. So both these documents which have come from the custody of the complainant are not found to be genuine documents in regard to the injury allegedly given to the child by the petitioner. The complainant is well advised not to engage herself in such type of endeavours in future and at this stage, I am not taking any harsh view against the complainant for preparing such medical records.

12. The child victim was also taken to Baba Saheb Ambedkar Hospital Rohini Delhi after the complaint was made by the complainant and he was got medically examined vide MLC No. 5742 dated 12.10.2020 and nothing abnormal was found in the medical of the child. The medical opinion was also sought in this regard from Dr. Baba Saheb Ambedkar Medical College & Hospital and the following opinion was given:

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“On perusal of above mentioned documents. I am of the opinion that

1. Normally, abrasion heals in a period of 7 to 10 days of its causation. It is not possible that the said abrasion mentioned in the MLC prepared on 12.10.2020 would have been caused between years 2016 to 2018.
2. Abrasion in anal area is possible by putting finger in the anus. However, some medical conditions including constipation can also cause abrasion in anal area.”
13. So all the medical documents produced on record by the complainant does not support the theory of the complainant. The petitioner has already joined the investigation. She is a lady working in Delhi University. Nothing is to be recovered from her, so no custodial interrogation is required. Co-accused who is stated to be the abetor has already been released on bail.
14. As far as the question of tampering with the evidence or threatening of witnesses is concerned, nothing is there on record and in my opinion the co-accused, who is the husband of the complainant and father of the child victim is in a better position to threaten and tamper with the evidence, if he so desire as compared to the present petitioner, but there are no such complaints against him in this regard.
15. Considering the above, the anticipatory bail is allowed subject to the following terms and conditions:-

- a) That accused/petitioner shall not leave the country till the pendency of the case.
- b) That she shall not meet the child till the recording of the statement of the child.
- c) That accused/petitioner shall not visit the place of complainant and keep herself 3 KM away from the residence of the complainant.
- d) The accused/petitioner shall not visit the school and day care of the child.
- e) The accused/petitioner shall cooperate in the investigation.

16. It is ordered that, in case of arrest, the applicant/petitioner be released on bail on her furnishing personal bond in the sum of Rs. 50,000/- along with one surety of the like amount to the satisfaction of concerned SHO. Needless to mention that violation of terms and conditions of the present bail order by the petitioner/accused shall call for cancellation of bail. The bail application is disposed of accordingly.

17. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

JULY 22, 2021

Sumant