

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

BAIL APPLN. 3872/2020

Reserved on: 10.08.2021

Date of Decision: 18.08.2021

IN THE MATTER OF:

SHABIR DANDOO

..... Petitioner

Through: Mr. Rajive Maini, Ms. Shriya Maini,
Advocates

versus

STATE (GOVT. OF NCT OF DELHI) AND ANOTHER

..... Respondents

Through: Mr. Panna Lal Sharma, APP for State
Mr. Rajesh Raina, Advocate for complainant

CORAM:

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)**

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present application has been filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the applicant seeking regular bail in FIR No. 316/2019 registered under Section 420/376/354/506/34/174A IPC at P.S. Paharganj.
2. Learned counsel for the applicant submitted that in the present case, the complainant is a foreign national aged about 45 years. The present FIR was lodged on 07.11.2019 wherein, the complainant had levelled accusations not only against the present applicant, but also against his brother, *Farooq Ali Dandoo* and father, *Ali Mohammad Dandoo*. He has

referred in detail to the order dated 05.07.2021 passed by the Sessions Court vide which *Ali Mohammad Dandoo* was admitted to anticipatory bail.

3. Learned counsel for the applicant submitted that the applicant along with his family members have been falsely implicated as the dispute is totally between him and the complainant is totally commercial in nature based on *inter se* business transactions between them. He laid great stress on the fact that while accusation case relates to the year 2016, the present FIR came to be filed after three years in the year 2019. During this time, the complainant admitted to visit various places in India as well as abroad and as such was not under any influence or pressure from the applicant or his family members.

4. He also referred in detail to the complainant's statement recorded under Section 164 Cr.P.C to submit that the same is not only inconsistent with her complaint, but also contained material improvements. It was submitted that in her subsequent statement, the complainant neither mentioned the incident of 01.05.2016 and 02.05.2016 nor the incidents of 20.03.2019 or 26.05.2016. Rather, the complainant had introduced an incident of 22.01.2019 which wasn't there in her initial complaint.

5. Learned counsel for the applicant emphasised on the fact that despite alleging rape by the applicant and sexual assault by the applicant's brother and father in the year 2016, the complainant continued to do commercial dealings and business negotiations with the applicant till lodging of the present FIR in 2019.

6. It was submitted that prior to the registration of the FIR, the complainant had addressed an E-mail dated 21.07.2019 to the applicant highlighting the amount which was payable to her. It is submitted that the complainant in her above E-mail did not utter a single word about any

offence as alleged in the FIR. The complainant had also written a letter dated 18.10.2019 to the SHO, Paharganj stating that the dispute between the complainant and the applicant was a business dispute and again in the said letter, no mention was made of any offence against any of the accused persons. Further, after registration of the FIR on 07.11.2019, the complainant also gave a letter dated 26.01.2020 to the Investigating Officer, wherein it was stated that the present FIR came to be lodged out of a misunderstanding and that the complainant did not want to pursue her case. It was also pointed out that the applicant had also sent a complaint dated 14.10.2019 through E-mail to the Commissioner of Police which was acknowledged vide return E-mail dated 31.10.2019. In this complaint, the applicant had stated that the complainant had business relations with him and was giving threats of false implication to extort money from him.

7. Learned counsel for the applicant also submitted that in her complaint, the complainant has also levelled allegations against the applicant's brother that he molested and attempted to rape her and applicant's father that he touched her thighs and chest inappropriately. It was alleged that a day after the incident committed by the applicant's brother, his father also went to the complainant's bedroom and inappropriately touched her on her thigh and chest.

8. Lastly, it was submitted that the charge sheet has already been filed and the applicant is not involved in any other case.

9. Learned APP for the State, duly assisted by the learned counsel for the complainant, has vehemently opposed the bail application. It was submitted that initially, the applicant established physical relations with the complainant on the pretext of promise to marry; and later, the applicant's brother and father took advantage of the complainant's precarious position

and committed the offence. It was submitted that existence of commercial transactions between the complainant and the applicant would not dilute the seriousness of the accusations. Learned counsel for the complainant also denied that any letter dated 26.01.2020 was ever given by the complainant to the Investigating Officer. Learned APP for the state, however, on instructions, submitted that the Investigating Officer had recorded this fact in the Case Diary dated 30.04.2020 wherein it was mentioned that the complainant had come on that day and given the letter dated 26.01.2020 vide which she has stated not to pursue the matter. It was also stated that the applicant has misused the concession of interim bail granted to him vide order dated 23.05.2020 as he failed to surrender despite the order dated 08.07.2020 passed by this Court.

10. In rebuttal, learned counsel for the applicant had referred to the medical documents of the applicant's family to submit that the entire family was suffering from COVID-19 and there were local restrictions on travel, the applicant being a permanent resident of Kashmir. He submits that the applicant has duly surrendered on 09.08.2021. Reference was also made to orders of Full Bench of this Court in **WP (C) 3037/2020** and **WP (C) 4921/2021** where, considering the pandemic situation on account of COVID-19, the interim orders passed in favour of the undertrials/convicts were extended from time to time. Learned APP, on instructions, has confirmed the factum of applicant's surrender.

11. I have heard learned counsels for the parties and also gone through the charge sheet and the other material placed on the record.

12. The complainant in her complaint stated that she arrived at the New Delhi International Airport on 30.04.2016. She had booked a guest house on booking.com. She hired a taxi from the airport to go to the guest house but

the taxi driver could not locate the guest house. He took her to the office of India Travel Reservation at *Panchkuain Road*, where she met the applicant who then induced her to book a room at Relax INN hotel, Patel Nagar. She further stated that on that night, the applicant took her to a Restaurant Bar where they consumed beer. He told her that he liked her. After that he made physical relations with her on the night of 30.04.2016. She threatened to lodge a complaint but he promised to marry her. The physical relations were also established on next two days i.e., on 01.05.2016 and 02.05.2016. The physical relations were again established on the promise of marriage with the applicant from 26.05.2016 for a period of 4-5 days at Hotel Singh Sons in Karol Bagh. She also mentioned about an incident of assault committed by the applicant that took place at her apartment in Delhi on 01.10.2019. On 14.10.2019, though applicant agreed to pay Rs. 9 lakhs to her in instalments but did not pay.

13. I have gone through the complainant's statement recorded under Section 164 Cr.P.C. and at this stage, it would be sufficed to say that the effect of inconsistencies and improvements, as pointed out hereinabove, would be seen at the time of trial.

14. From a reading of the complaint, it is apparent that complainant is a professionally mature business women who has travelled extensively during the period from 2016 to 2019 not only in India but also abroad. She has stated to have regularly gone to her native country many a times. The complainant also continued to have commercial transactions with the applicant.

15. Also, neither in her E-mail dated 21.07.2019 addressed to the applicant nor in her letter dated 18.10.2019 addressed to the SHO, P.S. Paharganj, she mentioned about any of the incidents. It was rather stated that

there was a business dispute between the applicant and her, which had been negotiated. It was stated that amounts were to be paid by 31.10.2019 failing which an FIR would be filed.

16. Keeping in view the totality of the facts and circumstances; the fact that charge sheet has already been filed, it is directed that the applicant be released on regular bail on his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M. and subject to the following further conditions:-

- (i) The applicant shall not leave the NCT of Delhi without prior permission of the concerned Court.
- (ii) The applicant shall remain available on mobile number: 9999694437, which he undertakes to keep operational at all times during the pendency of the trial.
- (iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- (iv) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
- (v) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.

17. The bail application stands disposed of in the above terms.

18. A copy of this order be communicated electronically to the concerned Jail Superintendent for information.

19. A copy of this order be immediately uploaded on the website.

20. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 18, 2021

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Click here to check corrigendum, if any