

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

BAIL APPLN. 417/2021

Reserved on: 10.08.2021

Date of Decision: 18.08.2021

IN THE MATTER OF:

FAROOQ DANDOO

..... Petitioner

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

versus

STATE OF NCT OF DELHI & ANR.

..... 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 438 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the applicant seeking anticipatory bail in FIR No. 316/2019 registered under Section 420/376/354/506/34/174A IPC at P.S. Paharganj, Delhi.

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, *Shabir Ahmad 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 the complainant and the applicant's brother, *Shabir Ahmad Dandoo* 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. Learned counsel for the applicant also submitted that in her complaint, the complainant has levelled almost similar allegations against the father of the applicant. It was alleged that a day after the incident committed by the present applicant, his father went to the complainant's bedroom and inappropriately touched her on her thigh and chest.

5. 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 which were alleged against the applicant's brother. Rather, the complainant had introduced an incident of 22.01.2019 which wasn't there in her initial complaint.

6. Learned counsel for the applicant emphasised on the fact that despite alleging rape by the applicant's brother and sexual assault by the present

applicant and his father in the year 2016, the complainant continued to do commercial dealings and business negotiations with the applicant's brother, *Shabir Ahmad Dandoo* till lodging of the present FIR in 2019.

7. 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's brother *Shabir Ahmad Dandoo* 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's brother 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's brother 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 his complaint, the applicant's brother had stated that the complainant had business relations with him and was giving threats of false implication to extort money from him.

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's brother, *Shabir Ahmad Dandoo*

established physical relations with the complainant on the pretext of promise to marry; and later, the applicant and his 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's brother 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.

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

11. 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 co-accused *Shabir Ahmad Dandoo* who then induced her to book a room at Relax INN hotel, Patel Nagar. She further stated that on that night, *Shabir Ahmad Dandoo* took her to a Restaurant Bar where they consumed beer. *Shabir Ahmad Dandoo* 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's brother 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's brother that took place at her apartment in Delhi on 01.10.2019. On 14.10.2019, though *Shabir Ahmad Dandoo* agreed to pay Rs. 9 lakhs to her in instalments but did not pay.

12. Insofar as the present applicant is concerned, it has been alleged that while the complainant was visiting Kashmir and staying with the family of *Shabir Ahmad Dandoo*, the applicant molested and attempted to rape her on 12.06.2016. He gave massage to her and started touching in between her legs and also her hips. Thereafter, he put his hands on her vagina. She screamed and asked him to get off. It was further mentioned that she complained to the applicant's brother i.e., *Shabir Ahmad Dandoo* about the incident who asked her not to worry. It was alleged that on the next day, the applicant's father touched her thighs and chest inappropriately.

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's brother.

15. Also, neither in her E-mail dated 21.07.2019 addressed to the applicant's brother 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 her and the applicant's brother, 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 in the event of arrest, the applicant be released on anticipatory bail subject to 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 Arresting Officer/Investigating Officer/SHO of the concerned Police Station 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: 8899861754, 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 immediately uploaded on the website.
19. 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