

(VIA VIDEO-CONFERENCING)

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

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Reserved on : 09.07.2021

Pronounced on : 22.07.2021

+ BAIL APPLN. 603/2021

SANDEEP KUMAR

.....Petitioner

**Through: Mr. Rakesh Tiku, Sr. Advocate
with Mr. Arun Sharma and Mr.
S.K. Gill Advocates.**

Versus

STATE NCT OF DELHI

..... Respondent

**Through: Ms. Rajni Gupta, APP for the
State with Insp. Virender, P.S.
Patpatganj, Industrial Area.
Mr. Sulaiman Khan, Advocate
for complainant.**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.

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292/2020, dated 16.10.2020 under Section 376/328/506 IPC registered at P.S. Patparganj, Industrial Area, Delhi.

2. Briefly stated the facts of the present case are that on 16/10/2020, victim/complainant came to PS Patparganj Industrial Area, and submitted a hand written complaint in which she stated that she used to live with her parents in Mandawali, Delhi. Her father was in Delhi Police. In May-June 2014, she along with her parents had gone to Shrinagar for LTC vacations and during this tour she came in contact with accused Sandeep (hereinafter called as "petitioner"), who was also on the same LTC tour with his family. Petitioner was also from Delhi Police. During this LTC tour petitioner became familiar with her family and he used to call her sister". Petitioner also obtained her mobile phone number by making a 'missed call' on his phone number from her mobile phone number. After return from LTC tour petitioner used to make phone calls on her phone and during one of such phone call conversation petitioner told her that his wife and daughter wants to meet her. Petitioner fixed that meeting at 'Akash Hotel located in Patparganj area. Petitioner's daughter also talked to her and told 'Bua aap aa jao'. After that petitioner told her to go to a particular room at 'Akash Hotel'. As per phone conversation she reached that particular room where only petitioner was present and he bolted the room from inside. When she asked petitioner about the absence of his wife and daughter he told that they are down stairs. Petitioner offered cold drink

to her and after that complainant became unconscious. During her unconsciousness petitioner raped her. He also took nude photographs and video of complainant. After 3-4 Hours she re-gained consciousness but by that time petitioner had again put on her clothes. After some days petitioner again called her and asked her to come to meet him but she refused. Upon this petitioner threatened her either to come to meet him or he will put her objectionable photographs and videos on 'net'. Under these circumstances she agreed to meet petitioner and when she went to meet him, he showed her the objectionable photographs and videos and again raped her at the same place i.e. Akash Hotel. As per complaint similar incidents took place with complainant about 10-15 times.

3. In 2016 complainant got married to 'S' and complainant asked petitioner to now delete her objectionable photographs and videos but he again threatened & blackmailed her to show those photographs and videos to her husband and in-laws and even after marriage petitioner made sexual relations with complainant. Petitioner even sent those objectionable photographs on the mobile phone of complainant but he deleted those photographs by adopting the process of 'delete everyone' on whatsapp. Finally, finding no way out; complainant shared these facts with her husband and lodged present complaint for necessary legal action against petitioner. Accordingly, the present case U/s 376/328/506 IPC was registered.

4. I have heard Ld. Sr. counsel for the petitioner, Ld. APP for the State, Ld. counsel for the complainant, who assisted the Ld. APP for the State and also perused the records of this case.

5. It is submitted by the Ld. Sr. counsel for the petitioner that there is a delay of 6 years in lodging the FIR as the alleged incident took place in the year 2014 and the FIR has been registered in the year 2020. It is further submitted by the Ld. Sr. counsel for the petitioner that the complainant has failed to give any date, time and month of the alleged offence. It is further submitted by him that the petitioner has joined the investigation at about 8-9 times and has been co-operating in the investigation. It is further submitted by the Ld. Sr. counsel that the charge sheet has already been filed and there are no chances of the petitioner threatening the witnesses or tampering with the evidence. It is further submitted that the victim is now married to a police man in the year 2016. It is further submitted by the Ld. Sr. Counsel that the mobile phone of the petitioner has already been seized by the IO and sent to FSL. Ld. Sr. counsel has further argued that the petitioner was taken to Aakash Hotel but nobody identified him there and even the manager of the hotel in his statement given to the police has stated that he has never seen the petitioner or the victim in their hotel.

6. It is further submitted by the Ld. Sr. counsel for the petitioner that the IO had appeared before the trial court at the time of hearing of

the bail application on 11.02.2021 and categorically stated that since the charge sheet has already been filed on 09.02.2021, the custodial interrogation of the petitioner is not required as he has joined the investigation as and when required by him.

7. On the other hand, it is submitted by the Ld. APP for the State with the assistance of Ld. counsel for the complainant that the allegations against the petitioner are grave and serious in nature and the victim has supported her version in her statement recorded U/s 164 Cr.P.C. Ld. APP for the State has further submitted that in the conversation which took place between the petitioner and the husband of the victim, the petitioner admitted that he had gone to Aakash Hotel alongwith victim.

8. In the instant case, no doubt, there is a delay of six years in recording of the FIR but what would be the fate of the same will be seen during the course of trial as the delay in recording the FIR in such type cases is not always fatal to the case of the prosecution.

9. As per the Status Report, the victim got married in the year 2016 and went to Bharatpur, Rajasthan and continued visiting her maternal home in normal manner but she never made a complaint about the petitioner to her family. In the year 2018, victim and her husband had some family dispute which was reported at Family Court Karkardooma for maintenance and domestic violence but the matter was resolved

through mediation. The manager of Aakash Hotel was also noticed by the prosecution who gave in writing that from 2014 to 2019 no entry in respect of the victim and the petitioner was found.

10. In the present case, there are various telephonic conversations between the petitioner, husband of the victim, mother of the victim, whose transcripts have been placed on record but effect of those conversations would be seen during the course of trial. However, the status report records that the audio recordings which were produced by the husband of the victim contained the voice of petitioner, victim and her husband. It was found that the petitioner was not passing any threat to the victim or her husband and was denying all the allegations against him. Though, in the said conversation, the petitioner has admitted that he had gone to a hotel with the victim but nothing wrong was done with the victim. The Status Report further records that the transcripts prepared by the IO reflects that victim remained present during the conversation that took place between her husband and petitioner and at certain point of time in the background, the victim was heard talking to her husband and saying that nothing happened between them and he was un-necessarily pressurizing her to say irrelevant things. Even the charge sheet in the instant case has been forwarded to the trial court without arrest.

11. Ld. APP alongwith counsel for the complainant has vehemently argued that the allegations against the petitioner are very grave and serious in nature but the severity of the allegations is not the only consideration which should result in denial or the grant of bail to the petitioner. The totality of the circumstances deserves to be seen before a person is granted or denied the anticipatory bail. The Supreme Court in case titled **Siddharam Satlingappa Mhetre Vs. State of Maharashtra** (2011) 1 SCC 694 has laid down that the Court should be loath to reject the grant of anticipatory bail in as much as it impinges on the personal liberty of a person. Meaning thereby, unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied.

12. The petitioner has already joined the investigation as per the IO and even as per the IO he is not required for any custodial interrogation and the charge sheet has been filed without arrest. There is nothing on record to suggest that there are any allegations of tampering with the evidence or threatening to the witnesses. Mobile phones have already been recovered by the IO and as far as the allegations made by the victim are concerned, those can be proved by the victim by entering into the witness box and for that purpose custodial interrogation of the petitioner is not required.

13. Having regard to the facts and circumstances of this case, I am inclined to admit the petitioner to anticipatory bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the IO/SHO concerned, subject to the following conditions:

- (i) That the petitioner shall not leave the National Capital Region of Delhi without the permission of the Trial Court;
- (ii) He shall not tamper with the evidence;
- (iii) He shall not threaten the victim/complainant and any of the witnesses of this case.

14. It is made clear that in case these conditions are violated, the complainant or the prosecutor shall be free to move an appropriate application for revocation of the grant of bail to the present petitioner.

15. Subject to the aforesaid conditions, the petitioner is allowed.

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

RAJNISH BHATNAGAR, J

JULY 22, 2021

Sumant