

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

Date of decision: 21<sup>st</sup> October, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 670/2021**

**SHRI SIKANDER RAJA**

..... Petitioner

Through: Mr. Gaurav Kochar, Advocate.

versus

**THE STATE**

..... Respondent

Through: Ms. Kusum Dhalla, APP for the State  
with SI Shubham Singh, PS Jyoti  
Nagar.

Mr. Yogesh Gaur, Advocate for the  
complainant.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The petitioner has filed the instant petition under Section 438 Cr.P.C seeking bail in FIR No.354/2020 dated 01.08.2020, registered at Police Station Jyoti Nagar for offences under Sections 323/376/506/313/377/354/34 IPC.

2. Facts, in brief, leading to the present petition are as under –:

- a) The instant FIR was lodged on the statement of the prosecutrix wherein she stated that she got married to one Asheem Raja S/o Shri Ahshan Ali R/o H.No.219/7, Kardampuri, Delhi on 23.03.2019 according to Muslim Rites and Customs. It is stated that after sometime her in-laws started to harass her but she

remained silent. It is stated that her mother-in-law is no more. She stated that her husband used to beat her and he had had unnatural sex with her several times. It is stated that the prosecutrix came to know that her husband is having an affair with some other girl and therefore she tried to make him understand but he did not listened to her. It is stated that thereafter she informed her father-in-law, Ahshan Ali, about her husband. It is stated that the father-in-law of the prosecutrix assured her that he would talk to her husband. It is stated that the husband of the prosecutrix would remain out of the house for several days, and only the prosecutrix and her father-in-law would reside in the house. It is stated that on 24.06.2020, her father-in-law asked her to make tea. It is stated that when she went to the room of her father-in-law to give him tea, her father-in-law caught hold of her hand, pulled her towards him, and raped her. It is stated that the father-in-law of the prosecutrix threatened her with dire consequences if she told anyone about the incident. It is stated that out of fear the prosecutrix could not muster the courage to tell her parents about the incident. It is stated that her father-in-law raped her on 2-3 occasions. It is stated that the prosecutrix started to get tensed. It is stated that one day, when the brother-in-law of the prosecutrix (petitioner herein) enquired as to why she was sad, she revealed the entire story to the petitioner herein. It is stated that the petitioner herein told the prosecutrix that he would talk to her father-in-law and assured her that everything would be fine. It is stated that after

that day, the behaviour of the petitioner herein towards the prosecutrix changed. It is stated that on several occasions, the petitioner herein tried to touch the prosecutrix inappropriately. It is stated that at last the prosecutrix told her parents everything, and asked them to come and take her. On the complaint of the prosecutrix, FIR No.354/2020 dated 01.08.2020, was registered at Police Station Jyoti Nagar for offences under Sections 323/376 IPC.

- b) The petitioner filed an application under Section 438 Cr.P.C. for grant of anticipatory bail. The same was dismissed by the learned ASJ-02, e-Courts, Shahdara, Karkardooma Courts on 22.01.2021.
- c) Thereafter the petitioner has approached this Court by filing the instant bail application.
- d) Notice was issued on 26.02.2021 and interim protection was granted to the petitioner.
- e) Charge-sheet has been filed against the petitioner and the father-in-law of the prosecutrix. The husband and the father-in-law of the prosecutrix are in custody.

4. Heard Mr. Gaurav Kochar, learned counsel for the petitioner, Ms. Kusum Dhalla, learned APP for the State, and Mr. Yogesh Gaur, learned counsel for the complainant, and perused the material on record.

5. Mr. Gaurav Kochar, learned counsel for the petitioner, states that the instant case arises out of a matrimonial dispute and the petitioner is being falsely implicated. He states that the petitioner does not stay with the family of the prosecutrix, as is evident from the FIR. He states that a reading of the

FIR indicates that there is no allegation of rape against the petitioner. He states that the petitioner has joined the investigation and, therefore, there is no requirement of custodial interrogation of the petitioner.

6. *Per contra*, Ms. Kusum Dhalla, learned APP for the State, contends that the prosecutrix has been tortured by her husband, her father-in-law and the petitioner herein, who is her brother-in-law. She states that her father-in-law has raped her, and the petitioner should be taken into custody in order to prevent the petitioner from threatening the witnesses and putting pressure on the prosecutrix.

7. Mr. Yogesh Gaur, learned counsel for the complainant, contends that the petitioner is accused of committing rape in another case being FIR No.108/2009, registered at Police Station New Usmanpur for offences under Sections 363/366/376(G)/120B/34 IPC and, therefore, the petitioner be not granted bail.

8. A perusal of the FIR shows that there is no allegation of rape against the petitioner herein. In the FIR, it is stated that the prosecutrix, her husband and her father-in-law were staying in the house. It is not stated anywhere in the FIR that the petitioner herein was staying in the same house. The allegation against the petitioner is that after the prosecutrix revealed the incident to the petitioner, the petitioner tried to take advantage of the situation and he started touching the prosecutrix inappropriately. The material on record also discloses that the petitioner has joined the investigation after receiving notice under Section 41A Cr.P.C and as directed by this Court. The learned counsel for the petitioner has submitted that the petitioner stands acquitted in FIR No.108/2009 by a judgment dated

22.12.2016. A copy of the judgment dated 22.12.2016, passed by the learned ASJ (SFTC), East/Karkardooma Courts, Delhi, has been placed on record.

9. Considering the fact that the petitioner is not accused of committing rape and the fact that the petitioner has joined investigation, this Court is inclined to grant bail to the petitioner in the event of arrest in FIR No.354/2020 dated 01.08.2020, registered at Police Station Jyoti Nagar for offences under Sections 323/376/506/313/377/354/34 IPC on the following conditions:-

- a) The Petitioner shall furnish a personal bond in the sum of ₹35,000/- with one surety of the like amount to the satisfaction of the Trial Court/Duty Magistrate.
- b) It is stated in the Memo of Parties that the petitioner resides at H.No.157, Gali No.7, Kardampuri, Sabhapur, Shahdara, Delhi. The petitioner is directed to reside at the same address till further orders and if there is any change in the address, the petitioner is directed to intimate the same to the IO.
- c) The petitioner is directed not to leave the NCT of Delhi.
- d) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- e) The Petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- f) Violation of any of these conditions will result in the cancellation of the bail given to the Petitioner.

12. It is made clear that the observations made in this Order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

13. Accordingly, the bail application is disposed of along with the pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 21, 2021**

*Rahul*

