

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

Date of decision: 14th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 594/2020**

SATINDER KUMAR

..... Petitioner

Through Mr. Prateek Chaturvedi, Advocate

versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for the State
SI Maneeta, Police Station Neb Sarai.
Mr. Vikrant Kumar, Advocate for the
prosecutrix

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 438 Cr.P.C is for grant of bail to the petitioner in the event of arrest in FIR No.41/2020 dated 16.01.2020, registered at Police Station Neb Sarai for offences punishable under Sections 376/506/509 IPC.

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

- a) A complaint was received from the prosecutrix stating that the petitioner herein has been in contact with her through www.Simplymarry.com since March, 2017. It is stated that the petitioner herein introduced himself as Aman Saini. It is stated that the petitioner told the prosecutrix that he is unmarried and is working in Indian Air Force. It is stated that the prosecutrix talked to the mother of the prosecutrix and her brother went to

the Air Force Office to meet the petitioner. It is stated that thereafter the petitioner, along with his sister and brother-in-law, came to meet the prosecutrix and her family. It is stated that on 27.04.2017, the petitioner took the prosecutrix to his house and molested her. It is stated that in May, 2017 the petitioner established physical relationship with the prosecutrix. It is stated that in June, 2017 the petitioner introduced the prosecutrix to his mother and the prosecutrix used to talk to his mother on phone. It is stated that later on the prosecutrix came to know that petitioner's real name is Satvinder Kumar and not Aman Saini, she also came to know that the petitioner is married and has two children. It is stated that the prosecutrix stopped talking to the petitioner but the petitioner used to call the prosecutrix using different Numbers. It is further stated that one day the petitioner took the prosecutrix to the house of another lady - Rakhi Puyari, where the prosecutrix came to know that the petitioner has abused her also. It is stated that when the prosecutrix met the wife of the petitioner, she told her that the petitioner had many more such affairs in the past. It is stated that the petitioner took some cash and a loan of Rs.2,60,000/- from the prosecutrix out of which he has returned the cash amount and has given some cheques in lieu of the loan amount which the petitioner had taken. It is stated that the prosecutrix filed a complaint against the petitioner in the Air Force Office as well. It is stated that after requests from the mother of the petitioner the prosecutrix withdrew her complaint.

It is further stated that on 02.10.2018, 25.12.2018 and 14.03.2018 the petitioner harassed and abused the prosecutrix. It is stated by the prosecutrix that she had not complained earlier because of societal fear. On the complaint of the prosecutrix, FIR No.41/2020 dated 16.01.2020, was registered at Police Station Neb Sarai for offences under Sections 376/506/509 IPC.

- b) The petitioner filed an application under Section 438 Cr.P.C seeking anticipatory bail. The learned Additional Session Judge New Delhi, *vide* order dated 20.10.2020, dismissed the said application.
- c) The petitioner has thereafter approached this Court by filing the instant bail application.

3. Notice was issued on 28.02.2020, interim protection was granted to the petitioner. Status Report has been filed.

4. Mr. Prateek Chaturvedi, learned counsel for the petitioner, states that the petitioner has been falsely implicated in the instant case. He states that even after coming to know that the petitioner is married, the prosecutrix was in touch with the petitioner and money was advanced by the prosecutrix to the petitioner. He states that the petitioner is an officer of the Indian Air Force and has roots in the Society. He further states that the petitioner has joined the investigation and is always available for investigation. He states that the fact that the petitioner is an Officer of Indian Air Force, there is no apprehension of the petitioner fleeing from justice. He further state that the petitioner was granted interim protection on 28.02.2020 and he has not misused or abused the protection granted to him. He, therefore, states that anticipatory bail be granted to the petitioner.

5. *Per contra*, Ms. Kusum Dhalla, learned APP for the State, opposes the anticipatory bail of the petitioner by stating that even after the petitioner was married, he opened an account in the matrimonial site in the year 2017 and that too using a different name. She states that investigation is to be conducted as to whether the petitioner has duped any other women or not. She further submits that it has to be ascertained as to whether the petitioner had no intentions to marry the prosecutrix right from the beginning. She further states that the petitioner is accused of a very serious offence punishable under Section 376 IPC and anticipatory bail should not be granted to him.

6. Mr. Vikrant Kumar, learned counsel for the prosecutrix, reiterates the contentions of Ms. Kusum Dhalla, learned APP, by contending that this is a case of promise to marry and not merely a case of monetary transaction. He states that the petitioner has duped the prosecutrix after exploiting her and therefore bail ought not be granted to the petitioner.

7. Heard Mr. Prateek Chaturvedi, learned counsel appearing for the petitioner, Ms. Kusum Dhalla, learned APP for the State and Mr. Vikrant Kumar, learned counsel for the prosecutrix and perused the material on record.

8. A perusal of the FIR indicates that the petitioner was married and yet he became a part of the matrimonial site and that too using a different name which shows that there was no intention of the petitioner to marry the prosecutrix right from the inception. Investigation is necessary to find out whether he has lured other women also.

9. The parameters for granting anticipatory bail have been succinctly laid down in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1

SCC 694, wherein the Supreme Court has observed as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. *Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.*

114. *These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire*

material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.”

(emphasis supplied)

10. The said principle has been affirmed by the Constitution Bench of the Supreme Court in Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Anr., (2020) 5 SCC 1.

11. The petitioner is accused of a serious offence punishable under Section 376 IPC. The petitioner has established physical relationship with the prosecutrix. Investigation is at a nascent stage. The prosecutrix has stated in the FIR that the petitioner has abused other women also and this aspect has to be investigated by the authorities. The possibility of the petitioner repeating the offence and/or exerting pressure on the prosecutrix or influencing the witnesses by misusing his position as an Officer of the India Air Force cannot be ruled out at this juncture.

12. It is well settled that the power under Section 438 Cr.P.C is an extraordinary power which should be exercised very sparingly. The petitioner is accused of a serious offence punishable under Section 376 IPC. The investigation is still going on and has not completed. Taking into account the facts and circumstances of this case, this Court is not inclined to grant anticipatory bail to the petitioner.

13. Accordingly, the petition is dismissed along with the pending

application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 14, 2021

Rahul

