

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 30.07.2021

%

Pronounced on : 16.08.2021

+ BAIL APPLN. 1221/2021

NIRMALA DEVI

..... Petitioner

Through: Mr. Sulaiman Khan, Advocate.

versus

THE STATE (N.C.T.) OF DELHI

..... Respondent

Through: Ms. Rajni Gupta, APP for the State
with SI Vikas PS Hari Nagar.

Mr. Sumit Gaba, Advocate for the
complainant.

+ BAIL APPLN. 1216/2021

ANIL

..... Petitioner

Through: Mr. Sulaiman Khan, Advocate.

versus

STATE N.C.T OF DELHI

..... Respondent

Through: Ms. Rajni Gupta, APP for the State
with SI Vikas PS Hari Nagar.

Mr. Sumit Gaba, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

BAIL APPLN. Nos. 1221/2021 and 1216/2021

Page 1 of 11

(VIA VIDEO-CONFERENCING)

ORDER

RAJNISH BHATNAGAR, J.

1. By way of this common order, I shall dispose of the petitions filed by the petitioners under Section 438 Cr.P.C. read with Section 482 Cr.P.C. seeking anticipatory bail in FIR No. 70/2021 under Sections 376/354/323/506/34 IPC registered at Police Station Hari Nagar.

2. In brief, the facts as per the case of the prosecution are that on 26.02.2021, two PCR calls were received at PS Hari Nagar vide DD Nos.30A & 36A regarding quarrel at WZ-47, Tihar Village, and the same were marked to ASI Nirranjan. ASI Nirranjan along with HC Jitender No. 1838/W reached at WZ-249, G-47, Tihar Village, Delhi. There it came to know that injured had already been shifted to DDU Hospital by PCR van. ASI reached DDU hospital. There injured prosecutix 'R' was found admitted vide MLC No. 80/21. Doctor mentioned A/H/O physical assault and sexual assault in MLC. The injured was shifted to Safderjung hospital. In Safderjung hospital statement of prosecutix 'R' was recorded in the presence of her father Nemi Chand. She stated that she runs a shop of small articles at WZ 249, G-47, Tihar Village, Delhi. On 20.11.2020, her husband expired due to illness. Her husband was owner of the house in which she is residing. Her mother in law and brother in law used to say that now she has nothing in the house and asked her to leave the house with her child, aged about seven years. It is alleged that a court case is pending between them regarding the

BAIL APPLN. Nos. 1221/2021 and 1216/2021

Page 2 of 11

(VIA VIDEO-CONFERENCING)

house and the Court has granted stay. It is alleged that after returning to home, her mother-in-law Nirmala Devi, brother-in-law - Anil @ Shanti and another brother-in-law - Mukesh@ Bunty told her that there was no need to be more happy and threatened to kill her. It is alleged that on 25.02.2021, at about 10.30 AM, while prosecutrix was going downward from 3rd floor, in the middle of stairs, Mukesh @ Bunty met her and asked her whether she was going to open the shop and threatened to kill her. It is alleged that when the prosecutrix was cleaning the shop, her mother-in-law came inside and started throwing articles of her shop and told her to get out with her son. Thereafter, arguments started between them and her mother-in-law started beating her. It is alleged that in the meanwhile, her brother-in-law Anil @ Shanti came inside the shop and hit his hand on her breast and pressed her breast 2-3 times. It is alleged that he hit her with some pointed object and her mother in law was asking to kill her. Her mother-in-law and brother-in-laws kept beating her. Thereafter, her brother-in-law Anil fled from the spot on the direction of her mother-in-law and she told the prosecutrix that she is 70 years old and nothing could happen to her. Thereafter, the prosecutrix called police and she was shifted to DDU Hospital.

3. On the statement of prosecutrix 'R', FIR No. 70/21, dated. 26.02.2021, under Sections 354/323/506/34 IPC was registered at PS Hari Nagar. During investigation, on 02.03.2021 statement under Section 164 Cr.P.C. of the prosecutrix was recorded by learned Metropolitan Magistrate, Tis Hazari

(VIA VIDEO-CONFERENCING)

Court. In her statement, in addition to the facts as stated in the FIR, prosecutrix stated that on 20.11.2020, her husband expired. She further stated in the statement that after the death of her husband, her mother-in-law, brother-in-law and sister-in-laws threw her belongings out of the house. It is alleged that on 05.12.2020, she had lodged a complaint against them at Police Station Hari Nagar. It is alleged that somehow they came to know about the complaint and when she reached at home, her brothers-in-law, namely, Anil @ Shanty and Mukesh @ Bunty met her at stairs. They both abused her and started hitting their hand on her breast 2-3 times and they said that they would make her prostitute and they would kill her. It is further alleged that they started scuffling with her. Then, she went to 4th floor. On 10 December, Anil and Mukesh came to her flat and Mukesh had consumed liquor. It is further alleged that they knocked the door and when she opened the door Anil pushed her inside and brought her in room. He was trying to remove her clothes. It is further alleged that Anil and Mukesh were touching her body inappropriately and scratching her body. Her hands were caught hold and Mukesh and Anil inserted finger in her private part. They were trying to rape her and she screamed. She was threatened by them by saying that today she is saved but if she discloses the Incident, they will kill her son. It is further alleged that thereafter the prosecutrix lodged complaint in Police Station.

(VIA VIDEO-CONFERENCING)

4. It is the case of the prosecution that on 03.03.2021, Section 376 IPC was added in the case. On 04.03.2021, co-accused Mukesh was arrested in the case. On 05.03.2021, petitioners - Anil Kumar and Nirmala Devi moved applications for anticipatory bail before the Sessions Court and the same were dismissed. Search of both the accused persons were made but they could not be traced so far. On 18.03.2021, co-accused Mukesh moved an application for regular bail and his bail application was dismissed by the Sessions Court. On 21.03.2021, prosecutrix was again medically examined at DDU hospital vide MLC No. 128/21.

5. It is submitted by learned counsel for the petitioners that the petitioner – Nirmala Devi is an old lady, around 75 years of age, and mother-in-law of the prosecutrix. It is further submitted that petitioner – Anil @ Shanti is the brother-in-law of the prosecutrix. It is submitted by the counsel for the petitioners that it is a matrimonial dispute which has been converted into different types of criminal cases. It is submitted by him that the prosecutrix filed a case under Domestic Violence Act in December, 2020, which is still pending. It is further submitted by him that another case for maintenance has been filed by the petitioner under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is further submitted by him that prosecutrix by stating wrong facts had obtained relief in the domestic violence petition. It is submitted by the counsel for the petitioner that prosecutrix in domestic violence petition submitted that deceased

(VIA VIDEO-CONFERENCING)

husband was owner of the property, which according to the counsel for the petitioner is factually incorrect. It is further submitted by the counsel for the petitioners that all the children of late Sh.Diwan Chand had executed relinquishment deeds in favour of petitioner on 22.04.2010, i.e., almost three years prior to the marriage of the prosecutrix with the son of the petitioner. It is further submitted by the counsel for the petitioners that prosecutrix and son of petitioner-Nirmala Devi had entered into second marriage. It is further submitted by him that dispute is nothing but the fight over the control of property by the prosecutrix. It is submitted by him that the FIR was registered on 26.02.2021 and the petitioner and her two sons have been falsely implicated. It is submitted by the counsel for the petitioners that no such incident, as stated in the FIR, has taken place. It is submitted by the counsel for the petitioners that petitioners are ready to join investigation and that petitioner-Nirmala Devi is an old lady 75years of age.

6. On the other hand it is submitted by learned APP for the State with the assistance of the counsel for the complainant that the victim has sent a complaint by post to SHO, PS Hari Nagar on 13.12.2020 regarding committing of rape upon her by both brothers-in-law namely Mukesh and Anil. On my query from learned APP for the State as to whether any action has been taken by the concerned SHO on this complaint of the petitioner, she says that no FIR was registered on the basis of this complaint for the reasons best known to the SHO concerned. It is further submitted by the

(VIA VIDEO-CONFERENCING)

learned APP that even statement under Section 164 Cr.P.C of the victim was recorded on 02.03.2021 where she made allegations against two brother-in-laws. It is submitted by learned APP for the State that allegations against the petitioners are supported by medical evidences as some lacerated wounds were found on her forehead. It is submitted by the counsel for the complainant that the counsel for petitioners is making factually incorrect statement. He submits that relinquishment deeds were executed in respect of property bearing no. WZ 249. On this, it is submitted by the counsel for the petitioners that relinquishment deed has also been executed by the children of late Sh. Diwan Chand in respect of other property bearing no. WZ260. The contention of counsel for the petitioners is that in respect of both the properties of late Sh. Diwan Chand, relinquishment deeds have been issued by all his legal heirs in favour of petitioner Nirmala Devi his wife.

7. I have heard learned counsel for the petitioners, learned counsel for the complainant and learned APP for the State. I have also perused the record and the status report filed by the State.

8. Petitioners in the instant case have joined investigation and it is not the case of the prosecution that they have not cooperated in the investigation. The disputes appear to be family dispute with regard to control of properties in question in which petitioner and prosecutrix are residing. In the instant case, FIR was lodged on 26.02.2021. At that

(VIA VIDEO-CONFERENCING)

particular time, there was no allegation of rape, however, when the statement of the prosecutrix under Section 164 Cr.P.C. was recorded, she made improvements and made allegations of rape against her both brothers-in-law – Mukesh and Anil. During the course of proceedings, i.e. on 10.05.2021, it was submitted by learned counsel for the complainant that IO of this case had called the prosecutrix in the Police Station and had threatened her and asked her to withdraw her all the cases against the petitioner. In view of the said submission of the complainant, additional status report dated 28.07.2021 was filed. The relevant portion of the same reads as under:

- 1. Most respectfully, it is submitted that on the last date of hearing Hon'ble court directed to file status report in respect of complaint filed by complainant against PSI Kavish (TO of the case).*
- 2. In this regard it is submitted that on 03.05.2021 a complaint was filed by the complainant in the office of DCP/West. Delhi vide General Diary: No. 6260 dated 03.05.2021 and it was further sent to ACP/Rajouri Garden office vide Dy No. 12079 on 06.05.2021 which was received in Police Station Hari Nagar, New Delhi vide No NCMTS No. 3960/ACP/RG, dated 17.05.2021 and NCMTS 1229 SHO/HN dated 18.5.2021. In this complaint the complainant alleged that FIR was registered after delay and section 307 or 308 PC has not been added in the present case as she sustain serious injuries. She further alleged that on 30.04.2021 when she was called to police station Hari Nagar by SI Kavish and she was pressurized by SI*

(VIA VIDEO-CONFERENCING)

Kavish to settle the matter with accused and withdraw her case filed against accused persons.

3. *That during inquiry of the complaint, complainant joined inquiry wherein he stated that her brothers in law Anil and Mukesh sexually assaulted her on 10/12/2020 and she filed complaint in this regard on 13/12/2020 and WSI Damini was the inquiry officer in this matter. She further stated that she was in depression at that time as her husband expired on 20.11.2020. She further stated that her mother in law Nirmala Devi and other relative requested her not to file case and assured that everything will be done according to her wish. She further stated that as she was in depression hence she accept their request and did not pursue her complaint. She further stated that on 25/02/2021 her in laws attacked her hence she got registered FIR against them. She further stated that she was very depressed and lonely and she was having doubt that the I.O is not taking her case seriously and might be favoring the accused persons and not arresting them and due to this reason she has made this complaint.*

4. *That inquiry was conducted regarding allegation leveled by the complainant and during enquiry it was revealed that as per direction of the Hon'ble Court the accused persons namely Anil Kumar and Nirmala Devi joined investigation of the case on 29.04.2021. Accused Anil Kumar produced a pen drive containing CCTV footage of their house, showing that they are seen inside the house from at 06.00 PM, dated 10.12.2020 to 07.00 AM, dated 11.12.2020. the pen drive of cctv footage was sealed and seized through seizure memo and placed on case file by IO SI Kavish. During investigation and the*

(VIA VIDEO-CONFERENCING)

same has been sent to FSL Rohini Delhi to examine whether is there any tempering in cctv footage or otherwise.

5. *That on 30.04.2021, father of the complainant namely Nemi Chand was contacted over his phone No. 85880-052683 to join the investigation, on which he came to police station with his daughter (Complainant) to police station Hari Nagar at 04.00 PM on the same day. They were examined in connection with the actual time of the incident which had happened with the complainant, on which she disclosed the time of incident was between 09.00 PM to 10.00 PM on 10.12.2020, her supplementary statement U/s 161 Cr.P.C was recorded. After that, complainant and her father left the police station. During inquiry it is found that SI Kavish has only confronted the complainant with regard to CCTV footage provided by the accused, as it was contradictory to allegations leveled by the complainant and clarification was very much essential from the complainant. There was no any malafide intention on the part of SI Kavish nor complainant was asked/pressurized to compromise the matter with complainant nor to withdraw her case. She was examined only in regard to time of incident which had become necessary especially subsequent to providing of pen drive containing CCTV footage of house. She was to the police station rather she had came of her own along with her father Nemichand.*

6. *During the inquiry of the complaint filed by complainant, the allegations of threatening and pressurizing the complainant to withdraw her case leveled against I.O./SI Kavish could not be substantiated."*

(VIA VIDEO-CONFERENCING)

9. The custodial interrogation of the petitioners is not required in the facts of this case because the complainant herself has to testify before the Court as and when the petitioners are put to trial. Therefore, keeping in view the facts and circumstances of the case, in the event of arrest, the petitioners be released on bail subject to their furnishing personal bonds in the sum of Rs.25,000/- each with two sureties each in the like amount to the satisfaction of the learned Metropolitan Magistrate/Arresting Officer/SHO concerned. However, the petitioners shall join investigation as and when required by the IO.

10. The petitions stand disposed of in the aforesaid terms.

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

RAJNISH BHATNAGAR, J

AUGUST 16, 2021