

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 30.07.2021

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Pronounced on : 16.08.2021

+ BAIL APPLN. 1224/2021

MUKESH KUMAR

..... 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

ORDER

RAJNISH BHATNAGAR, J.

BAIL APPLN. 1224/2021 and CRL.M.(BAIL) 807/2021 (for interim bail)

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in case FIR No. 70/2021 under Sections 376/354/323/506/34 IPC registered at Police Station Hari Nagar.

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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 Niranjan. ASI Niranjan along with HC Jitender No. 1838/W reached at WZ-249, G-47, Tihar Village, Delhi. After reaching the spot, they 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 brothers-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 house and the Court has granted stay. It is alleged that after returning 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

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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 @ Shanty 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 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, brothers-in-law and sister-in-law 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

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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.

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, petitioner-Mukesh was arrested in the case. On 05.03.2021 co-accused Anil Kumar and Nirmala Devi moved applications for anticipatory bail before the Sessions Court and the same were dismissed. On 18.03.2021, petitioner-Mukesh moved an application for regular bail and his bail application was dismissed by the Sessions Court.

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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 petitioner that the petitioner is the brother-in-law of the prosecutrix. It is submitted by the counsel for the petitioner that there are property/matrimonial disputes which have been now 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 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 petitioner 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 petitioner that prosecutrix and son of the petitioner 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

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submitted by him that the FIR was registered on 26.02.2021 and the petitioner has been falsely implicated. It is submitted by the counsel for the petitioner that no such incident, as stated in the FIR, has taken place. It is submitted by the counsel for the petitioner that petitioner has been languishing in jail since 04.03.2021.

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 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 brothers-in-law. It is submitted by learned APP for the State that allegations against the petitioner 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 petitioner 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 petitioner that relinquishment deed has also been executed by the

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children of late Sh. Diwan Chand in respect of other property bearing no. WZ260. The contention of counsel for the petitioner 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 petitioner, 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. The petitioner in the instant case is in judicial custody since 04.03.2021. 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 particular time, there were allegations of rape, however, when the statement of the prosecutrix under Section 164 Cr.P.C. was recorded, she made marked improvements and made allegations of rape against her both brothers-in-law – Mukesh and Anil. Even the complainant has made complaints against the IO with regard to threats given to her for withdrawing the case, and on enquiry the allegations made by the complainant could not be substantiated and were found to be incorrect. The complainant has to herself testify before the Court as and when the petitioner is put to trial.

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9. But at this stage, keeping in view the facts and circumstances of the case and considering the fact that petitioner is in judicial custody since 04.03.2021, the petitioner is admitted to bail on his furnishing personal bond in the sum of Rs.25,000/- with two sureties in the like amount, to the satisfaction of the learned Trial Court. The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned – at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail. The petitioner shall not tamper with the evidence. The petitioner shall not communicate with, or come into contact with any of the prosecution witnesses or the complainant. The petitioner shall not leave the NCT of Delhi without the prior permission of the concerned Trial Court.

10. The petition, along with the pending bail application, stands disposed of in the aforesaid terms.

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

12. A copy of this order be communicated electronically to the concerned Jail Superintendent.

RAJNISH BHATNAGAR, J

AUGUST 16, 2021

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