

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

+ **BAIL APPLN.1520/2021**

Date of decision: 22nd JULY, 2021

IN THE MATTER OF:

NIKHIL BHATTAL

..... Petitioner

Through Mr. Viraj Datar, Senior Advocate
with Mr. Krishanu Adhikary,
Advocate

versus

THE STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for the State
Mr. Rahul Chandlok, Advocate for
the complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.118/2021 dated 10.04.2021 registered at Police Station South Rohini for offences punishable under Sections 328, 389 and 34 IPC.

2. The brief facts leading to this bail application are as follows:

- a) A complaint was filed by one Rishab Jain (Complainant) stating that has a business of marble and tiles and he runs a Shop at B-81, Marble market, Mangolpur Kalan, opposite Indian Bank, New Delhi. He stated that the petitioner herein came to his shop and asked for some good quality marble stones/tiles for renovation of his residence and he insisted that the complainant must visit his house. It is stated that when the complainant visited the house of the

petitioner. The petitioner introduced the complainant to his girlfriend, Ishu @ Bobby, who lives with the petitioner. It is stated that the said Ishu @ Bobby offered soft drink to the complainant. It is stated that after consuming the drink the complainant started feeling dizzy. It is stated that the petitioner asked the complainant to take rest and he left the room. It is stated that after the petitioner left the room the said Ishu @ Bobby came close to the complainant and started rubbing his head and thereafter the complainant became unconscious. It is stated that when the complainant regained consciousness he was shocked to see that Ishu @ Bobby was rubbing his private part. It is stated that the complainant went outside the room and when the petitioner came back, the complainant narrated the incident to him. It is stated that the petitioner got furious and broke the phone of his girlfriend. It is stated in the complaint that the petitioner started demanding a mobile phone, a TV and Rs.2,00,000/- in cash from the complainant and threatened him that if his demands are not met, his girlfriend would file a case of rape against the complainant. It is stated that after the incident, the petitioner called the complainant for money more than 25 times. The complainant also produced various voice recordings in which the petitioner and his girlfriend are demanding money from the complainant and threatening him that if their demands are not met a case of rape would be filed against the complainant. On the complaint, FIR No.118/2021 dated 10.04.2021 was registered at Police Station South Rohini for offences punishable under Sections 328, 389 and 34 IPC.

b) It is pertinent to mention here that the petitioner and his girlfriend, Ishu @ Bobby also filed a complaint against the complainant herein, being FIR No.119/2021, dated 10.04.2021, for offences under sections 376/506 IPC.

c) The petitioner was arrested on 11.04.2021.

d) The petitioner filed an application for bail, being Bail application No.1280/2021, before the learned Sessions Judge, North West District, Rohini Courts, which was rejected vide order dated 22.04.2021.

e) A second application for bail was filed by the petitioner on 23.04.2021 which was rejected by the learned Sessions Judge, North West District, Rohini Courts, vide order dated 28.04.2021 on the ground that the investigation of the case is at a nascent stage and the possibility of the petitioner threatening the complainant cannot be ruled out.

f) The petitioner has, thereafter, approached this Court by filing the instant bail application.

3. Notice was issued on 10.05.2021. Status Report has been filed. The Status Report indicates that the voice sample of the petitioner was obtained after taking the permission of the Court and the same has been sent to Forensic Science Laboratory. The Status Report also indicates that opinion regarding intoxication of the complainant was obtained from the Medical Superintendent of Bhagawan Mahavir Hospital by giving a notice under Section 91 Cr.P.C.

4. During the Course of hearing on 14.07.2021, Ms. Kusum Dhalla, learned APP states that the charge-sheet has been filed.

5. Heard Mr. Viraj Datar, learned Senior Counsel for the petitioner, Mr. Rahul Chandlok, learned counsel for the complainant and Ms. Kusum Dhalla, learned APP for the State and perused the material on record.
6. Mr. Viraj Datar, learned Senior Counsel appearing for the petitioner states that the petitioner is in custody since 11.04.2021. He states that since the charge-sheet has been filed therefore there is no necessity of keeping the petitioner in custody and the petitioner be released on bail.
7. *Per contra*, Mr. Rahul Chandlok, learned counsel for the complainant submits that the complainant has been receiving threatening phone calls. He further states that the co-accused is still at large and therefore bail ought not be granted to the petitioner.
8. Ms. Kusum Dhalla, learned APP for the State also opposes the bail by stating that the co-accused is still at large.
9. The petitioner is accused of offences punishable under Sections 328, 389 and 34 IPC. An offence under Section 389 IPC is a bailable offence. The Status Report reveals that the voice sample of the petitioner has been sent to the Forensic Science Laboratory. The Status Report also indicates that opinion regarding intoxication of the complainant was obtained from the Medical Superintendent of Bhagawan Mahavir Hospital, where the complainant was admitted on 04.04.2021, by giving a notice under Section 91 Cr.P.C. There is nothing more required to be recovered from the petitioner. Just because the complainant is alleging that he is getting threatening calls, it will not be appropriate to keep the accused in custody and the Court can lay down conditions to ensure that the complainant is not harassed. There is nothing to show that till the co-accused is not arrested the petitioner has to be kept in custody. In view of the above, this Court is

inclined to grant bail to the petitioner on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of ₹1,00,000/- with one surety of the like amount who should be a relative of the petitioner to the satisfaction of the Trial Court.
- b) The complainant is a resident of C-57, Ahinsa Vihar, Secor-9, Rohini, New Delhi and the petitioner resides at House No. A-31, 2nd Floor, Pocket-0, Sector 2, Rohini, North West Delhi, 110085. The petitioner is directed not to enter Sector-09 Rohini till the examination of the complainant.
- c) The petitioner shall not leave NCT of Delhi without prior permission of this Court.
- d) The petitioner shall report to the concerned Police Station every alternate day at 10:30 AM and should be released after completing the formalities within half an hour.
- e) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- f) The petitioner has given his address in the memo of parties and shall continue to reside in the same address. In case there is any change in the address, the petitioner is directed to intimate the same to the IO.
- g) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- h) Violation of any of these conditions will result in the cancellation of the bail given to the petitioner.

10. It is made clear and needless to state that the observations made in this order are only for the purpose of grant of bail and cannot be taken into

consideration in the trial.

11. Accordingly, the bail application is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J.

JULY 22, 2021

Rahul

