

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 31.05.2021

Pronounced on: 04.06.2021

+ **BAIL APPLN. 1668/2021**

NIKHIL JAIN

.....Petitioner

Through: Mr. Gaurav Kochar, Advocate

Versus

STATE

.....Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for State with
SI Dheer Singh
Ms. Supriya Juneja, Advocate for
complainant

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Vide present petition, petitioner is seeking bail in FIR No. 302/2020, under Sections 376/376-D/323/506/109/34 IPC, registered at police station Farsh Bazar, Delhi.

2. The petitioner is in judicial custody in this case since 23.07.2020. The complainant of this FIR is none else than petitioner's wife. The present petition has been filed on the ground that petitioner is innocent and the FIR in question is an outcome of matrimonial dispute between the parties.

3. The brief background of this case, as spelt out in the FIR in question, is that the marriage of complainant with one Paras, brother of petitioner, was solemnized on 06.12.2014. Since Paras had frequent quarrels with his parents, he committed suicide on 22.05.2015. Thereafter, with the consent of parents of both the sides, marriage of complainant was solemnized with petitioner herein on 11.06.2015.

4. The allegations levelled by the complainant in the FIR in question are that petitioner and his parents forced her to enter into illicit relations with other men, whom petitioner used to bring home for money. The complainant has specifically named Praveen, Raghav, Dinesh and Deepak as the persons whom petitioner brought home and forced her to make physical relations with them on different occasions. The complainant has also alleged that petitioner forced her to make relations with Deepak on different occasions even though when she was pregnant. On one such occasion, petitioner made an obscene video of her and threatened that if she refused to do it, he will upload the same on You Tube and will also use this video to extort money from Deepak. It is also alleged that on 05.04.2020, Nikhil (petitioner), on the pretext of taking her and their son for outing, took them to Rudrapur, Uttrakhand and on their way their vehicle met with an accident. But

thereafter, petitioner took her to the residence of one Dinesh Khanna, where four five friends of Nikhil made her drink alcohol and thereafter, made sexual relations with her one by one.

5. At the hearing learned counsel for petitioner submitted that marriage between petitioner and complainant was solemnized on 11.06.2015 and since complainant/wife is a quarrelsome lady, matrimonial differences arose between them. Learned counsel further submitted that there is no medical or scientific evidence/material available on record to connect petitioner with the alleged offence.

6. Learned counsel for petitioner has brought to the notice of this Court, which has not been disputed by the prosecution, that the persons named in the FIR, i.e. Deepak Jai and Praveen, have been granted bail by the trial court on 17.08.2020 and 20.09.2020 respectively. Moreover, co-accused Kishan Raghav and the mother of petitioner - Geeta Jain, have also been granted anticipatory bail by this Court on 07.10.2020 and 28.07.2020 respectively. Another co-accused Dinesh Khandelwal has been granted bail by this Court on 17.08.2020.

7. Learned counsel further submitted that since petitioner is married to respondent No.2, no offence under Section 376 IPC is made out and Sections

323/506/109/34 IPC are bailable offences and so, petitioner deserves to be released on bail.

8. On the other hand, learned Additional Public Prosecutor for State opposed the present petition and submitted that charge sheet in this case has been filed and FSL report regarding mobile and laptop of petitioner is still awaited. Further submitted that statement of complainant in this case is yet to be recorded and if petitioner is released on bail, there is strong possibility of his threatening the complainant.

9. A perusal of material placed on record reveals that in the impugned order dated 11.02.2021 while dismissing petitioner's application for bail, the learned trial court has observed that complainant had difficulty in speaking and she was hard of hearing. Further observed that the Disability Certificate of complainant placed on record showed 60% disablement /impairment.

10. The status report dated 27.05.2021 placed on record by respondent/State, notes as under:-

"4. During investigation, statement u/s 164 Cr.P.C. of the victim was got recorded. As per statement u/s 164 Cr.P.C. of the complainant, there are some contradictions between the statement u/s 164 Cr.P.C. and the FIR. Firstly, she has not mentioned the name of Manoj Jain (her father-in-law) in her statement u/s 164

Cr.P.C. as mentioned in the FIR. Secondly, in the FIR the complainant has alleged that she was raped at Rudrapur, Uttarakhand by Dinesh and 4-5 other unknown persons but she has disclosed the names of Praveen (Praveen Jain), Raghav (Krishan Raghav) and Dinesh Khandelwal in her statement u/s 164 Cr.P.C. Moreover, during investigation, no entry was found in the entry/exit register of the Metropolis Society, Rudrapur regarding arrival of accused persons Praveen Jain, Raghav@ Krishan Raghav. However, it has revealed that the complainant, her husband Nikhil Jain and son had reached at the flat of accused Dinesh Khandelwal at Metropolis Society, Rudrapur on 05.04.2020 and had stayed there for about 10-12 days.

5. During local enquiry, it came has revealed that mother of the complainant was used to visit the in-laws of the complainant regularly. The complainant was also used to visit her parental house regularly since houses of both families are hardly 70 meter away from one another. Moreover, house of Sh. Pradeep Jain (real maternal uncle of the complainant) has been under construction for the last about 2 years which just opposite H.N. P-19, Gali No. 7, Shriram Colony, Bholanath Nagar, Delhi (in-laws house of the complainant) and he visits his under construction house but the complainant has never made any such complaint to Sh. Pradeep Jain.”

11. The Hon'ble Supreme Court in ***Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana Makwana (Koli) and Another*** 2021 SCC ***OnLine SC 335*** while deciding bunch of five appeals arising from orders of the High Court of Gujarat granting bail under Section 439 of the Code of Criminal Procedure 1973 to six persons, who were implicated in five homicidal deaths, observed as under:-

“43. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in Chaman Lal v. State of U.P. in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for non-application of mind. This Court observed:

“8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court

dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence...”

12. A cursory look upon copy of charge sheet placed on record reveals that prior to filing of impugned complaint on 21.07.2020, complainant had also filed a complaint on 03.07.2020 at police station Farsh Bazar, Delhi regarding family dispute between her and her husband and mother-in-law but no allegation of rape has been levelled in the said complaint. It is also recorded in the charge-sheet that complainant along with petitioner and their son in the month of April, 2020 had quarantined themselves in *Metropolis Society* due to Covid pandemic and the official register of enter /exit in the Society, has no entry for the persons namely Praveen Jain, Deepak Jain and Krishan Raghav.

13. Further, the contents of status report also note certain discrepancies between FIR and statement of complainant recorded under Section 164

Cr.P.C. In the opinion of this Court the contents of status report and charge sheet *prima facie* do not appear to support the case of complainant. However, the parties shall establish their case during trial.

14. It is not disputed that there are matrimonial differences between the parties. Petitioner in this case was arrested on 23.07.2020 and since then he is behind bars. The *Previous Conviction /Involvement Report SCRB, Delhi* placed on record reveals that no other case is pending against the petitioner. Charge sheet in this case has been filed and trial will take substantial time. Accordingly, this Court is of the considered opinion that petitioner deserves to be released on bail.

15. Consequently, without commenting on the merits of the case, the petitioner is directed to be released on bail forthwith upon his furnishing personal bond in the sum of Rs.20,000/- with one surety in the like amount, to the satisfaction of the Trial Court/ Duty Magistrate, while making it clear that any observation made herein shall not influence the prosecution case during trial.

16. The petitioner shall not directly or indirectly influence complainant and any other witness and shall appear before the trial court as and when directed.

17. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

JUNE 04, 2021

r

