

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

Date of decision: 05th OCTOBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2022/2021**

NARESH JUNEJA

..... Petitioner

Through: Mr. Sanjay Vashistha, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Kusum Dhalla, APP for the State.
Mr. Salim Malik, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 438 Cr.P.C is for the grant of bail to the petitioner in the event of arrest in FIR No.125/2021 dated 16.05.2021, registered at Police Station Civil Lines for offences under Sections 376/506 IPC.

2. Shorn of details, the facts, leading to the instant bail application, are as under:

- a) The instant FIR was registered on the statement of the prosecutrix wherein she stated that she knew the petitioner. It is stated that she and her husband deal in ready-made garments. It is stated that they have a shop in Gandhi Nagar and the petitioner also owns a shop in Gandhinagar. It is stated that in September, 2019 the petitioner herein invited the prosecutrix for dinner and took her to a

restaurant called Boa Village. It is stated that after dinner the prosecutrix went with the petitioner in his car. It is stated that the petitioner herein offered her beer and they were driving for some time. It is stated that after a while the petitioner took the prosecutrix to Bonta Park and parked the car outside the park. It is stated that the petitioner forcefully made physical relations with the prosecutrix. It is stated the prosecutrix could not protest because she was feeling dizzy after consuming beer. It is stated that after the incident the petitioner dropped the prosecutrix to her house and showed her obscene photos, that he had clicked on his phone and threatened the prosecutrix that if she told anyone about the incident, he would send the pictures to her husband and would circulate them in the market as well. It is stated that in February 2020, the petitioner asked the prosecutrix to meet him again. It is stated that out of fear the prosecutrix went to meet him. It is stated that the petitioner took the prosecutrix to a flat where he again physically forced himself on her. It is stated that thereafter due to lockdown, the petitioner and the prosecutrix were not in touch each other. It is stated that in December 2020 the petitioner once again forcefully made physical relations with the prosecutrix. It is stated that the petitioner is threatening the prosecutrix that he will send her obscene pictures to her husband and he is forcing the prosecutrix to meet him and, therefore, the instant FIR was registered.

- b) The petitioner filed an application, being Bail Application No.1341/2021, before the Sessions Court, seeking anticipatory

bail. The learned Additional Session Judge -05, Central District, Tis Hazari Courts, Delhi, considering the gravity of offence and the nature of allegations against the petitioner and considering the fact that threats are being extended to the prosecutrix, dismissed the said application *vide* order dated 07.06.2021.

c) The petitioner has thereafter approached this Court by filing the instant application.

3. In the petition, it is contended that the petitioner conducts a chit fund business and the husband of the victim was a member of the chit business. It is stated that the husband of the prosecutrix has given a cheque of Rs.10,00,000/- to the petitioner. It is contended that the instant FIR was lodged just to put pressure on the petitioner so that he could not encash the said cheque. A copy of the cheque bearing No.000129, dated 18.05.2021, drawn on Kotak Mahindra Bank and signed by the husband of the prosecutrix is annexed with the petition. Noting the said contention, notice was issued by this Court on 14.06.2021 and interim protection was granted to the petitioner. The petitioner was directed to appear before the Investigating Officer and join investigation as and when called for by the Investigating Officer.

4. On 07.07.2021, this Court directed the Investigating Officer to verify whether husband of prosecutrix was a part of any *kitty/Committee* formed by the petitioner and whether any amount was received/paid by him and the matter was adjourned to 27.07.2021.

5. Status Report along with the statement given by the prosecutrix under Section 164 Cr.P.C has been filed.

6. Heard Mr. Sanjay Vashistha, learned counsel for the petitioner, Ms.

Kusum Dhalla, learned APP for the State and Mr. Salim Malik, learned counsel for the complainant, and perused the material on record.

7. Mr. Sanjay Vashistha, learned counsel for the petitioner, contends that the husband of the prosecutrix was part of the *kitty/ Committee* run by the petitioner and the petitioner has given a sum of Rs.10,00,000/- to the husband of the prosecutrix. He, therefore, states that the present FIR is only a measure to force the petitioner not to encash the said cheque. He further states that the allegation of rape dates back to September 2019, however, no complaint was filed by the prosecutrix then. He states that the complaint is so timed that it has been filed exactly two days before the date of encashment of cheque given by the husband of the prosecutrix. He, therefore, states that the instant case is completely false and has been filed with *mala fide* intent to pressurize the petitioner not to encash the said cheque.

8. Ms. Kusum Dhalla, learned APP for the State, vehemently opposes the instant bail application by contending that the petitioner is accused of a very heinous crime punishable under Section 376 IPC. She states that there are allegations that the petitioner is threatening the prosecutrix. She further states that even after getting protection from this Court, the petitioner is not co-operating with the investigation. She, therefore, contends that anticipatory bail should not be granted to the petitioner.

9. Mr. Salim Malik, learned counsel for the complainant, has reiterated contentions raised by the learned APP. He also contends that a cheque book of the husband of the prosecutrix was missing from his office and a missing report had been lodged for the same on 14.04.2021. He states that the cheque bearing No.000129, dated 18.05.2021, drawn on Kotak Mahindra

Bank, for an amount of Rs.10,00,000/-, which has been annexed with the petition has been taken from the missing cheque book.

10. Mr. Sanjay Vashistha, learned counsel for the petitioner, in the rejoinder states that the petitioner stays at House No. 735, Vasant Avenue, Ludhiana, Punjab. He states that the petitioner is not given adequate time to join investigation. He states that the petitioner is co-operating with the investigation. He states that all the cheques are already in the custody of the Police.

11. The material on record shows that the petitioner was called by the Investigating Officer on 08.07.2021, but he did not come citing some family contingencies and said that he would join the investigation on 09.07.2021. On 09.07.2021, the petitioner told the IO that his car had developed some problem and he would come later. It is stated that the petitioner has not been co-operating with the investigation at all. It is stated that he has not submitted the details of *kitty/Committee* as well as his ledger register to the Investigating Officer. The interrogation report of the petitioner has been submitted by the Investigating Officer. A perusal of the interrogation report indicates that when the petitioner was asked about how many members were there in his Committee, the petitioner answered that there are about 100-150 members in his Committee. The report also reveals that when the petitioner was asked as to whether he had brought the details/records of each member of the Committee, the petitioner herein refused to divulge the details of the members. The petitioner herein has also not revealed as to what was the amount due and payable by the husband of the prosecutrix and against what amount the cheques had been given by the husband of the prosecutrix. The material submitted by the State also reveals that other than cheque bearing

No.000129, dated 18.05.2021, drawn on Kotak Mahindra Bank, for an amount of Rs.10,00,000/-, the petitioner has submitted three cheques:

- a) Cheque bearing No.000126 dated 18.06.2021 drawn on Kotak Mahindra Bank for an amount of Rs.6,00,000/-,
- b) Cheque No.000127 dated 18.07.2021 drawn on Kotak Mahindra Bank for an amount of Rs.4,00,000/- and
- c) Cheque No.000131 dated 24.08.2021 drawn on Kotak Mahindra Bank for an amount of Rs.4,58,750/-.

A perusal of all the cheques would show that Cheque No.000129 is dated 18.05.2021 whereas Cheque No.000126 is dated 18.06.2021, Cheque No.000127 is dated 18.07.2021 and cheque No.000131 is dated 24.08.2021. It is, therefore, very clear that the cheque numbers do not correspond with the dates of the cheques.

12. As stated earlier, a reading of the interrogation report shows that the petitioner has not given any proof as to what is the total amount the husband of the prosecutrix owes him.

13. 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 overimplication 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. ”*

14. No doubt it is well settled that 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. This cannot be applied when the accused does not co-operate with the investigation and does not provide information which will lead to the discovery of material facts. For this purpose, it may be necessary to curtail the freedom of the accused to enable the investigation to proceed without hindrance. The petitioner is accused of a serious offence of rape. The petitioner does not stay in Delhi. The apprehension of the petitioner fleeing from justice cannot be ruled out at this juncture. Grant of protection from arrest does not give a passport to the accused to not cooperate with the interrogation.

15. The account books of the petitioner have to be seized to ascertain as to whether there is any veracity in the petitioner's submission that the husband of the prosecutrix owes money to him. As stated earlier, the cheques are from the same cheque book which allegedly had been missing from the office of the husband of the prosecutrix, and the numbers of the cheques do not tally with the dates of the cheques. The prosecutrix has also stated that the petitioner is threatening her. All these facts have to be ascertained for which custodial interrogation of the petitioner is required.

16. As stated earlier, when the accused does not co-operate with the investigation and shields himself by concealing material information, then it becomes imperative not to grant anticipatory bail to the petitioner.

17. In the instant case, the petitioner is not co-operating with the investigation. The husband of the prosecutrix has filed a complaint stating that his cheque book was missing from his office. The petitioner has to explain as to how he got the cheques and who has filled those cheques. It also has to be ascertained whether the documents submitted by the petitioner

are correct or not. The account books have to be seized to ascertain whether the husband of the prosecutrix owed money to the petitioner or not or is the petitioner raising a false bogey only to avoid arrest. It has also been contended by the learned APP for the State that a new register showing the members of the *kitty/Committee* has been handed over and by no imagination can this register be said to be the correct register. For these purposes, the custodial interrogation of the petitioner would be necessary.

18. Furthermore, the petitioner is accused of the offence of rape. The petitioner does not stay in Delhi and has not given the correct address. The chances of the petitioner fleeing from justice cannot be ruled out. The prosecutrix has stated that she is being threatened by the petitioner. Looking at the facts of this case, this Court is of the opinion that the petitioner is in a position to threaten/intimidate the prosecutrix.

19. It is also necessary to ascertain as to whether the petitioner has the photographs of the prosecutrix or not, and all the phones of the petitioner have to be checked. In view of the fact that the petitioner is not cooperating with the investigation and recoveries have to be made, this Court is of the opinion that the custody of the petitioner is required to ensure a free, fair and full investigation.

20. In view of the above, this Court is not inclined to extend the protection granted to the petitioner on 14.06.2021.

21. Accordingly, the bail application is dismissed along with all the pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 05, 2021/Rahul