

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

Date of decision: 21st October, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2116/2021 & CRL.M.(BAIL) 970/2021**

AHSHAN ALI

..... Petitioner

Through: Mr. Gaurav Kochar, Advocate.

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for the State
with SI Shubham Singh, PS Jyoti
Nagar.

Mr. Yogesh Gaur, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner has filed the instant petition under Section 439 Cr.P.C seeking bail in FIR No.354/2020 dated 01.08.2020, registered at Police Station Jyoti Nagar for offences under Sections 323/376/506/313/377/354/34 IPC.

2. Facts, in brief, leading to the present petition are as under —:

- a) The instant FIR was lodged on the statement of the prosecutrix wherein she stated that she got married to one Asheem Raja S/o Shri Ahshan Ali (the petitioner herein) R/o H.No.219/7, Kardampuri, Delhi on 23.03.2019 according to Muslim Rites and Customs. It is stated that after sometime her in-laws started to harass her but she remained silent. It is stated that her mother-in-law is no more. She stated that her husband used to beat her and

he had subjected her to unnatural sex several times. It is stated that the prosecutrix came to know that her husband was having an affair with some other woman and therefore, she tried to make him understand, but he did not listen to her. It is stated that thereafter she informed the petitioner herein, about her husband. It is stated that the petitioner assured her that he would talk to her husband. It is stated that the husband of the prosecutrix remained out of house for several days and only the prosecutrix and the petitioner used to reside in the house and he would behave in a very pleasant manner with her. It is stated that on 24.06.2020 the petitioner asked her to make tea. It is stated that when she went to the room of the petitioner to give him tea, the petitioner herein caught hold of her hand, and pulled her towards him and raped her. It is stated that the petitioner threatened her with dire consequences if she told anyone about the incident. It is stated that out of fear the prosecutrix could not muster the courage to tell her parents about the incident. It is stated that the petitioner raped her on 2-3 occasions. It is stated that the prosecutrix became tensed. It is stated that one day when the brother-in-law of the prosecutrix enquired as to why she was sad, she revealed the entire story to him. It is stated that the brother-in-law of the prosecutrix told her that he would talk to the petitioner and assured her that everything would be fine. It is stated that after that day the behaviour of her brother-in-law changed and that on several occasions, her brother-in-law tried to touch the prosecutrix inappropriately. It is stated that at last the prosecutrix

told her parents everything and asked them to come and take her along. On the complaint of the prosecutrix, FIR No.354/2020 dated 01.08.2020, was registered at Police Station Jyoti Nagar for offences under Sections 323/376 IPC.

- b) The petitioner was arrested on 01.08.2020.
- c) Charge-sheet was filed on 24.09.2020
- d) The petitioner filed an application under Section 439 Cr.P.C. for grant of anticipatory bail. The same was dismissed by the learned ASJ, Shahdara, Karkardooma Courts on 08.06.2021.
- e) Thereafter the petitioner has approached this Court by filing the instant bail application.

4. Heard Mr. Gaurav Kochar, learned counsel for the petitioner, Ms. Kusum Dhalla, learned APP for the State and Mr. Yogesh Gaur, learned counsel for the complainant and perused the material on record.

5. Mr. Gaurav Kochar, learned counsel for the petitioner, states that the petitioner is a 65 years old man having ailments. He states that charge-sheet has been filed. He further states that the instant case arises out of a matrimonial dispute where the prosecutrix has tried to implicate everybody in the family. He further states that the incident took place on 24.06.2020 but the FIR was lodged only on 01.08.2020. He states that no explanation has been given by the prosecutrix for the delay. He states that the prosecutrix has made allegations against the petitioner who is the father-in-law and also against the brother-in-law. He states that in fact the prosecutrix has refused to have internal examination. He states that it has been a year and three months since the petitioner has been in custody i.e. since 01.08.2020 and that in the present circumstances, it is unlikely that the trial

will commence in the near future. The learned counsel for the petitioner, therefore, submits that the petitioner ought to be granted bail.

6. *Per contra*, Ms. Kusum Dhalla, learned APP for the State, contends that the petitioner is the father-in-law of the prosecutrix who is accused of a very serious offence. She states that the petitioner might threaten the prosecutrix if granted bail.

7. Mr. Yogesh Gaur, learned counsel for the complainant, also opposes the bail by contending that the prosecutrix was harassed by her husband, her father-in-law and her brother-in-law. He states that the petitioner has raped the prosecutrix and therefore bail ought not to be granted to him.

8. The parameters of granting bail have been laid down by the Supreme Court in a number of cases. In Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598, the Supreme Court laid down the factors that must guide the exercise of the power to grant bail in the following terms :

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) 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.”

In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Supreme Court observed as under:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused.

However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. danger of the accused absconding or fleeing, if released on bail;*
- v. character, behaviour, means, position and standing of the accused;*
- vi. likelihood of the offence being repeated;*
- vii. reasonable apprehension of the witnesses being influenced; and*
- viii. danger, of course, of justice being thwarted by grant of bail.*

10. *It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”*

9. Rape is an extremely heinous offence which stipulates minimum punishment of 7 years and can go up to life. The petitioner is accused of a very heinous offence of raping his own daughter-in-law. The fact that the FIR was filed after two months does not mean that the prosecutrix has filed a false case. It is stated in the FIR that the prosecutrix was scared and was reluctant to tell her parents about the incident, but when she was repeatedly

harassed and raped by the petitioner herein, she mustered the courage and informed her parents about the incident.

10. Rape is not merely a physical assault; it is often destructive of the whole personality of the survivor. The act of rape has the ability to scar the mental psyche of the survivor and this trauma can persist for years. The Supreme Court in Shyam Narain vs. State (NCT of Delhi), (2013) 7 SCC 77 had observed as follows:

27. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men.

11. Looking at the fact that the petitioner is the father-in-law of the prosecutrix, the possibility of threatening the prosecutrix cannot be ruled out at this juncture.

12. Accordingly, Accordingly, the bail application is dismissed along with the pending application(s), if any. However, looking at the fact that the petitioner is in custody since 01.08.2020, the trial court is directed to hear

the arguments on charge and examine the prosecutrix as expeditiously as possible, preferably within six months.

13. It is made clear that the observations made in this order are not on the merits of the case.

OCTOBER 21, 2021
Rahul

SUBRAMONIUM PRASAD, J

