

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

Date of decision: 16th NOVEMBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2475/2021**

RADHYE SHYAM

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Damanpreet Kohli, Mr. Manish
Malhotra, Mr. Tarun Gaur and Mr.
Harsh Gautam, Advocates.

versus

STATE

..... Respondent

Through: Ms. Meenakshi Chauhan, APP for the
State with SI Pramila, PS Janakpuri.
Mr. Jitender Kumar Jha and Mr.
Sarsij Narayanam, Advocates for the
complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 438 Cr.P.C has been filed for grant of bail to the petitioner in the event of arrest in FIR No. 235/2021 dated 25.05.2021, registered at Police Station Janak Puri for offences under Sections 376 IPC.

2. The factual matrix which has transpired in this case is as under –:

- a) It is stated that the complainant was working in the Human Resource Department at the company of the Petitioner, M/s Dabas Securities and Allied Services. It is stated that the Petitioner would induce and pressurize female employees of his company to have physical relations with him. The complainant/prosecutrix states

that she joined the company of the Petitioner during the Covid-19 lockdown, in June 2020, and the Petitioner in November 2020 allured her to meet him at a hotel and had forceful sexual intercourse with her. It is stated that the Petitioner forcefully raped the complainant at Holiday Inn in Agra on 30.12.2020. The FIR states that in January 2021, Petitioner again coaxed her to meet him at a hotel room and the same was refused by the complainant. The Petitioner herein without any notice or reason, fired the complainant from her job in the company.

- b) However, the complainant rejoined the job after talking to the reporting manager, who informed the complainant about how she had been harassed in the same manner by the Petitioner. The FIR further states that after rejoining the company, she was promoted and her work had increased, consequently raising her salary. It is stated that another employee who had joined as receptionist also was dragooned into having physical relations with the Petitioner, and the complainant due to imposition by the Petitioner, succumbed under pressure after repeatedly airing her discomfort in the workplace. It is stated that the complainant recounted this incident to one of her colleagues and friend, one Rajiv Jha, who told the Petitioner, on a phone call, to desist from exploiting his employees through allurement. She further states that due to this call made by her friend, he filed an FIR against the complainant's friend for criminal intimidation.
- c) Investigation is still ongoing in the instant matter and Charge-sheet is yet to be filed with the Sessions Court. The statement of

the victim under Section 164 of the Code of Criminal Procedure has been recorded by the Ld. Magistrate Dwarka Court on 27.05.2021. The statement of Ms. R.S., a former employee at the company of the Petitioner was recorded telephonically under Section 161 Cr.P.C. The statement of another employee - VB, was recorded by the I.O. telephonically on 30.05.2021. The telephonic conversations of the Petitioner and the complainant during her tenure of employment in Petitioner's company have been transcribed and attached on the record.

- d) The Ld. Sessions Court, Dwarka, Delhi dismissed the Petitioner's plea for anticipatory bail vide order dated 01.07.2021. The Ld. Court reasoned that the contents of FIR are supported by the Section 164 statement of the prosecutrix complainant. Secondly, the Court relied upon two conversations presented before that Court by the I.O. wherein the Petitioner had approached other lady employees of his company for sexual favors. The order also records that these statements were later retracted by both the employees in question on 02.06.2021. Further, the Ld. Court relied upon the transcriptions of conversations exchanged between the Petitioner and Complainant, and opined that the Petitioner was in a position of authority as the employer of the complainant and abused his superior position to forcefully subjugate the complainant to enter into an involuntary sexual relationship during the course of her employment, despite the resistance shown by the complainant. Further, on refusal shown by the complainant to

have intercourse with the Petitioner, in January 2021, he fired her from the job and asked her to look for employment elsewhere.

4. Heard arguments of both parties and perused the material on record.
5. Mr. Mohit Mathur, Ld. Senior Advocate appearing for the Petitioner, submits that the Petitioner and Complainant were in an employer-employee relationship which later on developed into a consensual physical relationship. He submits that the complainant joined the HR Department of the business office of the Petitioner during the Covid-19 lockdown in June 2020, and had sexual relations with him on three different occasions- twice in December 2020 and once in March 2021. He submits that the complainant travelled to Agra with him for a business trip and stayed with him at a hotel for two days. He contends that if the complainant had been raped, she ought to have lodged an FIR within the shortest time possible and not filed the FIR virtually 6 months after the first incident of rape was committed.
6. Mr. Mathur further submitted that the complainant is a lady in her thirties and has been working since 2011, and is not a newcomer. Given the situation she should have intimated the first incident to her relatives, co-workers and the Police, and should have taken some action insofar as not attending office or putting her resignation papers. He contends that none of these was done at the relevant point of time and she established physical relations with him on two different occasions thereafter spread over four months. He vehemently contends the manner of the complainant is far from normality and principally dubious. He argues that the complainant was in regular touch with the Petitioner during all times and never once did she explicitly object to his advances or resist the Petitioner's behavior or threatened to resign after warning the Petitioner of legal action.

7. Mr. Mathur further submitted that the complainant was given a promotion and a salary raise within six- eight months of joining the company and submitted that filing the FIR of rape against the petitioner was a last resort done hastily and is only a way to blackmail the Petitioner to extract money from him. He submitted that the complainant before filing the FIR tried to arm-twist the Petitioner by asking her male friend, one Rajiv Jha, to extort the Petitioner, who called the Petitioner and started intimidating him by calling him repeatedly to give money to him by threatening him and the complainant and lest he would disclose about the affair of the Petitioner to his family. He argues that the Petitioner filed an FIR(NCR-0007/2021) at Vasant Vihar Police Station on 24.05.2021 under Section 155 Cr.P.C for criminal intimidation and the present FIR is only a counter-blast. Mr. Mathur lastly submits that the bill made at ITC Maurya Hotel dated 20.12.2020 shows that the room booked there was in the name of the complainant.

8. *Per Contra*, Ms. Meenakshi Chauhan, Ld. APP for the State, submits that the charges the Petitioner is accused of are grave, especially in light of the fact that the complainant and petitioner were in an employer-employee relationship where the Petitioner had an upper-hand due to his position as the owner of the company. She submits that during investigation it was found that the Petitioner has behaved in a similar manner with other lady employees of his company where he would entice them to establish physical relations in exchange of which he would hike the salaries and give promotions. However, if any lady declined to engage physically with him, she would be removed from the job and her services would be terminated. She drew the attention of the Court to sub-clause (2) of Section 376 IPC, and

stated that this is not a case of simple rape where the punishment is seven years of R.I. falling under sub-clause(1) of Section 376 IPC, but a case falling under sub-clause(2) which states that when a rapist is in some position of authority or trust over the victim, the punishment prescribed there is minimum 10 years of R.I. which can extend till Life Imprisonment and 'Life' is to be construed literally as natural life of a person.

9. She further submitted that the Complainant has been physically exploited and mentally manipulated by the Petitioner who lured her with better positions and perks in the company. She argued that the material in the FIR and Section 164 CrPC are the same, and there is no improvement in the statement. She submits that protection from arrest should not be granted to the Petitioner as there is a serious possibility of him tampering with the evidence, and the witnesses who already gave statement under Section 161 CrPC supporting the statement of the prosecution have already withdrawn their statements by letters to the S.H.O. She argues that in a case where the offence alleged of is rape the thumb rule followed by the Courts is that bail is granted rarely and only after the statement of the victim is recorded in Trial or after the filing of a chargesheet. She contends that the order of the Ld. Trial Court dated 01.07.2021 denying anticipatory bail is a perfect order which precisely records the reasons why pre-arrest bail should not be given in the case and should be followed by this Court.

10. Mr. Jitendra Jha, Ld. Counsel appearing for the complainant submitted that the delay in filing in FIR has been due to the reason that the complainant was being psychologically manipulated by the Petitioner and was being told that she would be promoted and given a better pay package. He submitted that the complainant was subdued due to the fact that her job

depended on the Petitioner in a time like the present with the pandemic weighing in on everyone and increasing financial difficulty. He relies on the transcripts of the conversations between the complainant and petitioner showing portions of the chats and communications stating that the Petitioner was constantly harassing her by repeatedly calling her, forcing her to meet alone with him at a hotel. He submits that the complainant was manhandled and raped by the Petitioner in the washroom of the office on 13.05.2021, a fortnight before the filing of the present FIR. He submits that the complainant was distressed and as a last resort filed the FIR as she was being tortured and traumatized by the Petitioner. He argued that the Petitioner is a powerful person who possesses a revolver and there is a real danger to the life of the complainant if he is granted anticipatory bail. He adopts other arguments of Ms. Meenakshi Dahiya.

11. I have perused the case file, materials placed in the sealed cover and the annexure containing transcribed version of the telephone calls made between the Petitioner to the complainant.

12. Law relating to grant of anticipatory bail has been succinctly laid down by the Supreme Court in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, wherein it has observed as under:

"85. It is a matter of common knowledge that a large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because Section 438 CrPC has not been allowed its full play. The Constitution Bench in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] clearly mentioned that Section 438 CrPC is extraordinary because it was incorporated in the Code of Criminal Procedure, 1973 and before that other provisions for grant of bail were Sections 437 and 439 CrPC. It is not

extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some Courts of smaller strength have erroneously observed that Section 438 CrPC should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] .

88. The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

90. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage."

13. Whether or not the sexual intercourse which took place between the Petitioner and the Complainant was consensual in nature is to be dealt with during the course of the trial and this Court refrains itself from commenting on the merits of the same. However, this Court finds it pertinent to note that consequent arrest of an individual on the basis of mere allegations has the potential to destroy the reputation of the said individual. Therefore, it is necessary to apply great care and circumspection while dealing with arrest at a pre-conviction stage.

14. With regard to grant of anticipatory bail, it is to be analyzed whether the Petitioner is in the position of tampering with evidence or influencing the witnesses. In the instant case, the Trial Court *vide* order dated 01.07.2021 had dismissed the anticipatory bail application of the petitioner herein on the ground that the petitioner was in a position of authority and he could exert dominance over the complainant as well as over other employees who were witnesses in this matter. However, it is to be noted that two witnesses who were the employees, have now left the company and, therefore, it can safely be said that the petitioner is no longer in a position to influence them. Further, mere apprehension of tampering with evidence or influencing the witnesses cannot be a ground for rejecting an application for anticipatory bail.

15. For the above said reasons, this Court is inclined to grant bail to the Petitioner in the event of arrest on the following conditions -

- a) The Petitioner shall furnish a personal bond in the sum of ₹50,000/- with two sureties of the like amount, one of them should be a relative of the petitioner, to the satisfaction of the Trial Court/Duty Magistrate.

- b) The petitioner is directed to surrender his Passport with the Trial Court.
- c) It is mentioned in the Memo of Parties that the petitioner is a resident of RZ-H-705/1, Gali No.1, Raj Nagar - 2, Dabri, New Delhi. The petitioner is directed to reside at the same address and if there is any change in the address, he is directed to intimate the same to the Investigating Officer.
- d) The Petitioner shall visit the concerned Police Station three times a week i.e. on every Monday, Wednesday and Friday at 10:30 AM and be relieved by the I.O. by 12:00 PM after recording the presence in the daily register.
- e) The Magistrate shall verify whether the Petitioner has a revolver/fire-arms, if yes then the Petitioner then would have to surrender the fire-arms and its license before the Magistrate.
- f) The Petitioner shall be available to join the investigation as and when required by the I.O.
- g) The Petitioner should attend all the proceedings of the Trial through VC or physically.
- h) The Petitioner should not contact the complainant or her family or tamper with any witnesses. In case Petitioner attempts to contact any witness, his protection shall stand forfeited forthwith.

17. It is made clear that the observations made in this order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

18. Accordingly, the bail application is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 16, 2021

Rahul

