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

+ **BAIL APPLN.2837/2021**

Date of decision: AUGUST 16th, 2021

IN THE MATTER OF:

ISHU

..... 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. The petitioner has filed the instant petition under Section 438 Cr.P.C. for grant of bail in the event of arrest 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 under:

a) A complaint was filed by one Rishab Jain (Complainant) stating that he 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 on 01.04.2021, one Nikhil Bhattal, whom the complainant knew, 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 said Nikhil Bhattal, he introduced the complainant to his girlfriend, Ishu @ Bobby (the petitioner herein). It is stated that the petitioner lives with Nikhil Bhattal. It is stated that the petitioner offered a soft drink to the complainant. It is stated that after consuming the drink the complainant started feeling dizzy. It is stated that the said Nikhil Bhattal asked the complainant to take rest and he left the room. It is stated that after Nikhil Bhattal left the room the petitioner herein 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 the petitioner was rubbing his private part. It is stated that the complainant went outside the room. It is stated that when Nikhil Bhattal came back, the complainant narrated the incident to him. It is stated that on hearing about the incident Nikhil Bhattal got furious and broke the phone of his girlfriend. It is stated in the complaint that thereafter demands for a mobile phone, a TV and Rs.2,00,000/- in cash were made and the complainant was threatened that if demands are not met the petitioner herein would file a case of rape against the complainant. It is stated that after the incident the complainant was called more than 25 times for payment of money. The complainant also produced various voice recordings to substantiate that the petitioner and Nikhil Bhattal 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. 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 Nikhil Bhattal 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 co-accused Nikhil Bhattal was arrested on 11.04.2021. He has been granted bail by this Court *vide* order dated 22.07.2021 in BAIL APPLN. 1520/2021.

d) The petitioner filed an application for anticipatory bail, being Bail application No.2776/2021, before the learned Sessions Judge, North West District, Rohini Courts, which was rejected *vide* order dated 30.07.2021.

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

3. Notice was issued on 04.08.2021. Status Report has been filed. The Status Report indicates that in the voice recording the petitioner herein is also heard demanding a TV and a Mobile phone from the complainant. It is also mentioned in the Status Report that the petitioner is being heard threatening the complainant of dire consequences. It is stated in the Status Report that the petitioner has no permanent address and her mobile phone is also switched off. It is stated in the Status Report that despite making all efforts the Police has not been able to arrest find the petitioner and she is evading arrest.

4. 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.

5. Mr. Viraj Datar, learned Senior Counsel appearing for the petitioner states that the fact that the petitioner was trying to prepare her defence and therefore the fact that she did not join the investigation does not mean that the petitioner was absconding. He states that the petitioner had gone to the Police Station and her statement under Section 164 Cr.P.C was recorded in the complaint filed by her against the complainant onb allegations of rape. He states that the mere *ipse dixit* in the Status Report that the petitioner is absconding does not hold water. He states that the Police have not taken any steps/action against the petitioner by filing applications before the concerned Court to declare the petitioner a proclaimed offender. He further states that other than taking voice samples there is no necessity for arresting the petitioner and therefore the petitioner should be granted anticipatory bail.

6. *Per contra*, Ms. Kusum Dhalla, learned APP contends that the petitioner was not available at her residence when the Police went there and the petitioner had not joined the investigation. She also states that the FIR was lodged on 10.04.2021 and the Police did not rush to the court by moving an application without taking all efforts to ensure that the accused against whom allegations are made joins the investigation. She states that the present case is one of honey trap and the fact that the petitioner gave her statement under Section 164 Cr.P.C. would have no relevance because the first step in a case of rape is to record the statement of the prosecutrix under Section 164 Cr.P.C. She further states that the moment the complainant filed the instant FIR the petitioner has gone into hiding and she has surfaced only

when the co-accused, Nikhil Bhattal, was granted bail by this Court. She further states that the investigation is at a very nascent stage, *qua* the petitioner, the petitioner is alleged of an offence under Section 328 IPC for which the petitioner can be punished with up to ten years of imprisonment. She states that the conduct of the petitioner shows that she can abscond and therefore the petitioner ought not be granted anticipatory bail.

7. Mr. Rahul Chandlok, the learned counsel for the complainant supports the case of the prosecution and states that the petitioner and the co-accused have constantly threatened the complainant and have demanded money. He states that it is a case of honey trap and anticipatory bail ought not to be given to the petitioner.

8. A reading of the FIR shows that this is a case of honey trap. The allegation against the petitioner is that she has threatened the complainant and has demanded money. Material on record shows that only when the complainant filed the instant FIR, the petitioner filed her complaint under Section 376 IPC against the complainant herein. Investigation is at a very nascent stage. The petitioner is accused of an offence under Section 328 IPC which permits for imprisonment up to four years.

9. The parameters that are necessary for consideration for grant of anticipatory bail are well settled. The Court while granting or rejecting to grant bail has to take into account several facts such as:

- a. The nature and gravity of the accusation and the exact role of the accused ;
- b. 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;

- c. The possibility of the applicant to flee from justice;
- d. The possibility of the accused's repeating similar or other offences;
- e. The court has also to take into account reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

10. It is well settled that while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely:

- a) no prejudice should be caused to the free, fair and full investigation and;
- b) there should be prevention of harassment, humiliation and unjustified detention of the accused.

11. Charge-sheet *qua* the petitioner is yet to be filed. The petitioner's voice sample has to be taken and the investigation has also to be conducted as to whether there are any other cases in which the petitioner is involved and as stated earlier the investigation is at a nascent stage. The petitioner is accused of an offence under Section 328 IPC, which is a serious offence. There is some justification in the contention of the learned APP that the conduct of the petitioner does show that there is a likelihood of her fleeing from justice and that she would not cooperate with the investigation. The probability of the petitioner and the co-accused, Nikhil Bhattal, extending threats to the complainant cannot be ruled out at this stage.

12. In view of the above, this Court feels that this is not a fit case where

the petitioner should be granted bail in the event of arrest.

13. Accordingly, the petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J.

AUGUST 16, 2021

Rahul

