

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

Reserved on : 26.10.2021

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Pronounced on : 15.11.2021

+ **BAIL APPLN. 3316/2021**

KRISHAN

..... Petitioner

Through: Dr. Alok, Mr. Siddharth Narang, Ms.
Smriti Walia and Ms. Aanchal
Budhraja, Advs.

versus

STATE

.... Respondent

Through: Mr. Raghuvinder Varma, APP for the
State with SI Madhavi.

Mr. Sohan Lal, Adv. for the victim
Victim in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 644/2021 under Section 376 IPC registered at P.S. Burari.

2. Briefly stated, the facts of the case are that on 02.08.2021, the present FIR was registered on the basis of the statement of victim wherein she alleged that she interacted with the petitioner through

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Facebook and thereafter both of them became friends. They both started talking with each other on phone. During conversation victim disclosed her job requirement to the petitioner, on which petitioner assured to get her meeting scheduled with some of his known. On 11.07.2021, petitioner asked victim to meet her at Burari. Petitioner sent his current location and asked the victim to come at Burari More. When victim reached there, petitioner told that meeting is not possible at roadside and he took room in the OYO Rooms/Guest House at Burari More. Victim went inside the room with petitioner. Thereafter, petitioner made sexual relations with the victim against her will and he ran away from there.

3. Victim made PCR call. She reached at PS Burari and told that petitioner would meet her on 16.07.2021 and she did not want legal action at that time. When petitioner did not meet her on 16.07.2021, victim gave her statement on which the present case was registered.

4. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, assisted by the Ld. counsel for the complainant and also perused the Status Report filed by the State.

5. It is submitted by the Ld. counsel for the petitioner that the petitioner is innocent and he has been falsely implicated in the present case. He further submitted that the present case is motivated. He further submitted that there is a delay of 21 days in the registration of

the FIR which is unexplained. He further submitted that the victim is a mature girl aged around 21 years and on the other hand, the petitioner is only 18 years old student and has been falsely implicated in the present case. He further submitted that it is highly improbable that an 18 years old student who is not even a resident of Delhi would promise to offer job to a 21 years old Delhi based girl.

6. It is further submitted by the Ld. counsel for the petitioner that the allegation made by the victim that petitioner made sexual relations with her against her will does not seem to be probable because victim did not shout or call for help at the time of commission of offence, despite the incident taking place in a public place. He further submitted that no recovery is to be effected from the petitioner, so the custodial interrogation of the petitioner is not required. He further submitted that the petitioner has clean antecedents. It is further submitted by the Ld. counsel for the petitioner that there were exchange of messages between the victim and the petitioner and phone calls were also made between them even after the date of the alleged incident, which shows that they were having cordial relations and only for the reasons best known to the victim she has falsely implicated the petitioner.

7. He further submitted that victim had not undergone any medical examination on the date of the incident i.e. 11.07.2021 and the medical

examination of the victim was conducted on 02.08.2021 and there is no reasonable explanation by the victim for this delay. He further submitted that the petitioner has deep roots in the society and there are no chances of him fleeing from justice. He further submitted that no inducement or promise of job was ever given by the petitioner to the victim and the said allegation is absolutely false.

8. On the other hand, while opposing the bail application, Ld. APP for the State has argued on the lines of the Status Report filed by the State. It is submitted by the Ld. APP for the State, assisted by the Ld. counsel for the complainant that the statement of the victim U/s 164 Cr.P.C was recorded on 03.08.2021, in which she corroborated the facts mentioned in the FIR. It is further submitted by the Ld. APP that during investigation victim has provided screenshots of WhatsApp chat with the brother-in-law and sister of petitioner and in the chat it can be seen that Rajan who is the brother-in-law of petitioner and Suman who is the sister of the petitioner tried to contact the victim. He further submitted that both the said persons were examined in this regard and they admitted that they tried to contact the victim.

9. It is further submitted by the Ld. APP that the petitioner is absconding and NBW against the petitioner were issued on 07.09.2021. He further submitted that the alleged offence is heinous in nature and the allegations made against the petitioner are very grave and serious in

nature. He further submitted that the case is at its initial stage of investigation and custodial interrogation of the petitioner is required for the investigation purposes and in case the anticipatory bail is granted to the petitioner, he may influence the victim.

10. In the instant case, no doubt, there is a delay of 21 days in recording of the FIR but what would be the fate of the same will be seen during the course of trial as the delay in recording the FIR in such type cases is not always fatal to the case of the prosecution.

11. As per the Status Report, the victim went to meet the petitioner on 11.07.2021 which is the date on which as per the allegations made by the victim, petitioner made sexual relations with her against her will in OYO Rooms/Guest House. It has also come in the status report that on the same date, the victim made PCR call and also went to police station and in the police station she told that petitioner would meet her on 16.07.2021, so she did not want legal action at that time and it is only when the petitioner did not meet her on 16.07.2021, victim made her statement on the basis of which the present case was registered. It is not understood as to what stopped the victim from lodging the complaint against the petitioner on the same date and as to why instead of making a complaint against the petitioner, she chose to meet him on 16.07.2021.

12. One also cannot lose sight of the fact that admittedly, the incident took place in a room which is a room of OYO Rooms/Guest House at Burari More which is a public place but very strangely, the victim did not make any hue or cry at the time when as alleged by her, the petitioner made sexual relations with her against her will and ran away from there. No doubt, victim made a PCR call and also went to police station but there also, she failed to lodge any complaint against the petitioner.

13. During the course of arguments, Ld. counsel for the petitioner has drawn the attention of the court to the WhatsApp chat and the phone calls which were made between the victim and the petitioner to show that even after the date of incident the victim was chatting happily with the petitioner and also talking with him on phone. As far as this contention of the Ld. counsel for the petitioner is concerned, the veracity of these chats and phone calls can only be tested during the course of trial and at this stage, the detailed analysis of the same cannot be done, though these chats shows that the relation were not bad even after the alleged incident.

14. Ld. APP alongwith counsel for the complainant has vehemently argued that the allegations against the petitioner are very grave and serious in nature but the severity of the allegations is not the only consideration which should result in denial or the grant of bail to the

petitioner. The totality of the circumstances deserves to be seen before a person is granted or denied the anticipatory bail. The Supreme Court in case titled **Siddharam Satlingappa Mhetre Vs. State of Maharashtra** (2011) 1 SCC 694 has laid down that the Court should be loath to reject the grant of anticipatory bail in as much as it impinges on the personal liberty of a person. Meaning thereby, unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied.

15. It has also been argued by the Ld. APP that the petitioner is absconding and NBWs have already been issued against him, so he is not entitled to anticipatory bail. I do not agree with this contention of the Ld. APP that merely because NBWs have been issued against the petitioner, this should be a sufficient ground for denying the grant of anticipatory bail if it is otherwise made out. Every reasonable person who has approached the Court for grant of anticipatory bail will keep away from the investigation for sometime so that his bail application does not become infructuous.

16. As far as the allegations of the victim that brother-in-law and sister of the petitioner tried to contact her and the contention of the Ld. APP that in case the petitioner is released on bail, he may influence the

victim, this aspect of the matter can be taken care of by putting a stringent condition on the petitioner.

17. There is nothing on record to suggest that there are any allegations of tampering with the evidence or threatening to the witnesses or victim by the petitioner and as far as the allegations made by the victim are concerned, those can be proved by the victim by entering into the witness box and for that purpose custodial interrogation of the petitioner is not required.

18. Having regard to the facts and circumstances of this case, I am inclined to admit the petitioner to anticipatory bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the IO/SHO concerned, subject to the following conditions:

- (i) That the petitioner shall not leave the country without the permission of the Trial Court;
- (ii) He shall not tamper with the evidence;
- (iii) The petitioner or any of his relative shall not threaten the victim/complainant and any of the witnesses of this case.

19. It is made clear that in case these conditions are violated, the complainant or the prosecutor shall be free to move an appropriate application for revocation of the grant of bail to the present petitioner.

20. Subject to the aforesaid conditions, the petition is allowed.

21. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

NOVEMBER 15, 2021

Sumant

