

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 22.11.2021

Date of decision: 08.12.2021

+ BAIL APPLN. 3852/2021

LUXMIKANT

..... Petitioner

Through: Mr. Virender Pratap Singh Charak,
Mr. Shubhra Parashar, Mr. Pushpender
Singh Charak, Mr. Ram Pal Singh
Tomar, Advocates.

Versus

STATE(GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms. Aashaa Tiwari, APP for State
with SI Parmjit Singh, PS Prem
Nagar.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicant, vide the present application seeks the grant of bail in relation to FIR No.554/2020, PS Prem Nagar under Sections 323/363/366/376D/199 of the Indian Penal Code, 1860 r/w Section 12 of the POCSO Act, 2012 and Section 67 of the IT Act, 2020 submitting to the effect that he has been incarcerated since 27.12.2020 and has been falsely implicated in the instant case and that he is wholly innocent.

2. Notice of the application was issued to the State as well as to the prosecutrix.

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.12.2021
18:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

3. The prosecutrix was present in person on 22.11.2021 and opposed the bail application of the applicant.
4. The status report dated 11.11.2021 was submitted by the State under the signatures of the SHO, PS Prem Nagar along with the copy of the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix dated 27.12.2020.
5. The applicant has submitted that the relations between the applicant and the prosecutrix were wholly consensual and that the prosecutrix was in fact his wife and it is because the prosecutrix wanted a mutual consent divorce only two months after the marriage because of a rift between the parties and as the applicant/petitioner was not inclined for a divorce, the FIR in question was lodged. *Inter alia* the applicant has submitted that though the FIR was registered under Section 376D of the Indian Penal Code, 1860, two other co-accused persons in the instant case are on bail which itself negates the allegations against the applicant.
6. The applicant has further submitted that he and the prosecutrix were married on 29.09.2020 at the Arya Samaj Sanatan Vaidik Sanskar Trust according to Hindu rituals and customs and that the marriage certificate and photographs attached with the application do not show any kind of pressure or force or undue influence upon the prosecutrix and do not show any kind of fear on her face and that she was a major at the time of the marriage and had even stayed with the applicant at his house for about two months after the marriage. *Inter alia* the applicant submits that the family members of the prosecutrix

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

were informed about their marriage and the prosecutrix was in regular touch with her parents and so were the parents of both sides.

7. The applicant has submitted also that the allegations in relation to the alleged rape and kidnapping attributed to him are wholly false that the charge sheet in the matter has been filed and that there are material contradictions in the version that the prosecution has put forth during the course of the investigation and no useful purpose would be served by further incarceration of the applicant.

8. As per the averments in the FIR registered on 26.12.2020, it had been stated by the prosecutrix that she was 18 years of age and that in the year 2018 she was studying in Standard IX and from that time, the applicant used to tease her whilst she went to her school and that this continued for about 1½ years, that whenever she went out, the applicant teased her and that in July 2020 they became friends because the applicant used to say that if she did not want a boyfriend, she could make him a friend. She further stated that 2-3 days prior to the marriage (apparently a reference to her own marriage with the applicant) the applicant had sent a photograph of his cut hand and one photo that was sent by the applicant showed a mark on his neck to indicate that he was attempting to hang himself and he had told his friend that the photograph be showed to the prosecutrix and she be told that if she did not meet him, he would die and would falsely implicate her brothers and would also get her humiliated and thus the prosecutrix went to meet the applicant at the 70 ft road near the Amarwati Hospital at about 10 a.m. where the applicant Luxmikant,

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

Vipul, Bala and Mohit were present and the applicant once again showed her the photograph in which he had cut his hand and told her that he would die if she did not accompany him to his house and she was not agreeing to go and at that time Luxmikant, the applicant and his three friends, had forcibly caught her and took her to the applicant's house and took her to a room on the third floor and there the accused Bala had caught hold of her hands, and the accused Vipul caught hold of her legs and the applicant raped her of which a video was made by the accused Mohit and then the applicant told her to accompany him to get married otherwise he would make the video viral and then the applicant booked an Ola and took her to the Tis Hazari Courts and there he married her according to the Arya Samajic Rites at the Tis Hazari Court and after the marriage he took her to his home and used to beat her at his house and his mother also used to beat her and one day on finding an opportunity she ran away from the house of Luxmikant but he caught hold of her and brought her back and hit her head against the wall, but that on 28.11.2020, when he was sleeping, she went to the terrace and called the police and the police came and got her freed from there and left her at her mother's house and thereafter she continued to live at her parental home.

9. It has been stated further through the FIR that on 24.11.2020, she had gone to the Arya Samaj to get her marriage cancelled but the staff had informed the applicant but the applicant had not come and in the evening the applicant had sent an obscene video of hers on to her father's phone and told him that if she was not sent to his house within

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

two days, he would make the entire video viral. As per the FIR registered on 26.12.2020, on 25.12.2020 SI Paramjit Singh on receipt of DD no. 32 A along with Ct.Narender No.2940/RD had gone to the spot House No.K-1/292 at Prem Nagar-II, Delhi where he met the prosecutrix who had stated that she would come subsequently along with her family members and would give her statement and thereafter that night the complainant with her family members came to the Police Station and gave a written complaint to the SI and thereafter the NGO Counsellor was called and the complainant was also examined at the SGM Hospital, Mangolpuri vide MLC No. 305A/2020 wherein it was recorded by the doctor to the effect:-

- “ Victim knows accused named Laxmi Kant (20 yr):: 2018, he was his school senior.
- They became friends, 5 months back
- Laxmi Kant likes her since 2018 but they are not friends
- He attempts suicide (?) & showed incised marks of suicide on hand, photographs through facebook.
- He asked her to meet her, otherwise he commit suicide
- Then on 29th Sept. 2020, she met him - there were his 3 friends also present.
- They took her to Laxmikant's home - 3 of them hold her hands & legs & Laxmikant raped her & one of them made her video.
- Then he forced her for marriage & forcibly married to her in Arya Samaj Mandir.
- Her Mother in law was involved in prostitution business. She forced her to do the same for money making - she refused - then her mother in law, beat her
- Then finally on 28.11.2020, she came to her own home through police.”

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

10. On the basis of the statement and the MLC, the FIR was registered under Sections 363/376D/366 of the Indian Penal Code, 1860 and Section 12 of the POCSO Act, 2012. Though in the FIR the date and time of the incident was not known but the place of the incident was mentioned as Prem Nagar II, Kirari, Delhi with the rukka having been presented on 11:50 a.m. on 26.12.2020.

11. DD No.32A dated 25.12.2020 as recorded at Police Station Prem Nagar at 11:56:32 on the basis of which the Investigating Officer had gone to the spot reads to the effect:

“Ref. Event ID - 2527981, Incident Address: 292, BLOCK-K-1 PREM NAGAR-2 KIRARI SULEMAN NAGAR, North West Delhi, Sultanpuri C Block, Delhi, 110086, Incident Description: CALLER LADY KI KUCHH DIN PAHLE JABARDASTI SAADI HUI THI AB LADKI APNE GHAR AAI HUI HAI LADKA WAPIS APNE GHAR AANE KE LIYE BOL RHA HAI AUR DHAMKI DE RHA HAI LADKI NE THANE ME COMPLANT KAR RAKHI HAI AAJ BHI THANE ME GYE THE THANE WALE KUCHH NAHI KAR RHE HAI, Mobile No:9971265662, 9971265662, From: CT MONIKA, 10129/PCR, हस्ब आमद इत्तला PCR CALL दर्ज कंप्यूटर करके SI RANDEEP SINGH D -5316 के हवाले की गयी / जो रवाना मौका हुए जो मुनासिब कार्यवाही अमल में लाएंगे/ submitted by HC/DO ”

12. The prosecutrix through her statement under Section 164 of the Cr.P.C., 1973, dated 27.12.2020 put forth her age on that date as being 18 years and stated that she was studying in standard X. Through the statement under Section 164 of the Cr.P.C., 1973 the prosecutrix stated that 1 ½ to 2 years ago prior to her statement, the applicant used

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

to harass her used to follow her whenever she went to school and used to tease her on the road and used to send her photographs of his cutting his hand and trying to commit suicide and these photos were shown to her by Vipul and Mohit, friends of Laxmikant, and that about a year ago Vipul brought a letter sent by the applicant in which it was mentioned that he would die and that she should talk to him and such kind of letters were sent by him 5 to 6 times and that as a consequence thereof she started talking to the applicant and if she did not talk to him, he used to slap her on her way and assault with fists blows and thus out of fear she started talking to him in January-February and whenever she did not talk to him he used to threaten her that he would cut his hand and commit suicide.

13. Through her statement the prosecutrix stated that the applicant Luxmikant told her to make a video whilst she was bathing and asked her to take the photo whilst she was talking and laughing so that everyone would think that she was talking to him of her own accord and that she thus made a call in the same manner as stated by the applicant. The prosecutrix submitted further that the applicant had saved that video. The prosecutrix submits that on the basis of this video the applicant used to torture her everyday and the applicant called her again to his house on 29.9.2020 and told that if she did not come to his house the video would be made viral and she had gone to his house and asked him to delete the video but he did not delete the same and he took her to a room in his house and had sex with her and Vipul, Mohit and Bala had confined her in the room and then the applicant had forcible sexual relations with her against her wishes in

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

the room and thereafter after all this, he took her to the Tis Hazari Courts and snatched her gold chain from her neck and took her to the Court and forcibly married her and that from the side of Luxmikant, i.e., the applicant, two person Sonu and Malti were present but there was no one from her side.

14. Inter alia, the complainant stated that her family members had already lodged a complaint to the police that the applicant aged 20 years had given money to his counsel and got the marriage performed and the police had called the applicant to the Police Station on that day itself and he took her to the police station also and that he had her videos and thus she did not say anything in the presence of her family members and the police and she could not talk to her family members and the police had sent her family members home and sent her and the applicant to the applicant's house where the applicant beat her a lot and so did his mother .

15. Inter alia the prosecutrix in her statement under Section 164 of the Cr.P.C., 1973 stated that the applicant's mother used to deal in prostitution and was also beating her for taking her for the same but she had not gone. Thereafter she used to be beaten and her husband (apparently reference to the applicant) used to get her photographs clicked and put it on the Facebook so that everyone would think that she was happy and the applicant's elder brother also used to ask her to get the videos made whilst laughing and taking off her clothes and once she had made an attempt to run but Vipul, Bala and Mohit had apprehended her and brought her back to the applicant who had beaten her and that this had taken place after 29.9.2020 and before

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 08.11.2021
18:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

28.11.2020, that thereafter on 28.11.2020 she found the phone of the applicant in the morning and when everyone was sleeping she thus telephoned the police and the police came after about 1 ½ hours as she kept telephoning the police whereafter the police came and took her to the Police Station, called her family members and she told her family members everything and the police said that it was a matrimonial dispute and the matter would have to go to the Court and she thus went to her home and after 15/20 days she went to the Arya Samaj Temple to get her marriage cancelled but a lawyer telephoned the applicant to come and sign and the applicant had stated that he would see whether he would come or not and the prosecutrix and her family members had thus come home.

16. Inter alia the prosecutrix through her statement under Section 164 of the Cr.P.C., 1973 stated that the applicant had sent her obscene videos to her brother and had told him that she should be sent back to his house within two days or that the videos would be made viral and that her brother had gone to the Police Station to show the message but the police did nothing. Thereafter they had taken the assistance of news reporters and thus the reporters staged a dharna outside the police post whereafter the FIR was registered otherwise the police used to say that it was a matrimonial dispute between husband and wife.

17. It is the avowed contention of the applicant/petitioner that he has been falsely implicated in the instant case, that there are variations in the statement made by the prosecutrix when the FIR was registered and in her statement under Section 164 of the Cr.P.C., 1973 in relation

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

to the manner in which she was allegedly raped by the petitioner for whereas as per the FIR on the persistent demand of the petitioner to meet the prosecutrix or else he would commit suicide, she met the petitioner on 29.09.2020 and his three friends were present i.e. Vipul, Bala and Mohit and the petitioner had showed her his phone that he was slicing his hand and told her that he would die if she did not accompany him and then she was not going but the petitioner and his three friends caught hold of her, took her to the petitioner's house and took her to a room on the 3rd floor and there the co-accused Bala caught hold of her hand and the co-accused Vipul caught hold of her feet and the petitioner raped her of which a video was made by the co-accused Mohit, whereafter, the petitioner told her to get married to him or else he would make the video viral, whereafter, the marriage was solemnized, as per the statement of the prosecutrix under Section 164 of the Cr.P.C., 1973 dated 27.12.2020, in January-February 2020 after the applicant had been repeatedly sending photographs of his cutting his hand or trying to attempt to commit suicide through his friends Vipul and Mohit and the petitioner had also sent her 5-6 letters that he would die if she did not talk to him and in January-February 2020, she had started talking to the petitioner and whenever she did not talk to him he would threaten to kill himself or cut his hand and had one day told her that he had made a video call to her while she was bathing and asked her to talk whilst laughing so that everyone could think that she was talking to him of her own accord and she did the same and the petitioner had saved that video and used to torture her with that video and on 29.09.2020 he had called her to his house

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

and told her that if she did not come, he would make the video viral and when she went to his house and asked him to delete the video, he did not do so and rather took her to a room in his house and his friends Vipul, Bala and Mohit had locked her in the room and the petitioner thereafter had forcible physical relations with her and thereafter got married to her at the Tis Hazari Court, Delhi and gave his false age.

ANALYSIS

18. Undoubtedly, there appears to be some variance in the statement which forms the basis of the FIR and the statement under Section 164 of the Cr.P.C., 1973, however, the prosecutrix through the FIR and through her statement under Section 164 of the Cr.P.C., 1973 is consistent in her statement *prima facie* that the petitioner had had forcible relations with her pursuant to which she had to get married to him on 29.09.2020. The statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix also indicates to the effect that her nude photograph whilst she was taking a bath had been taken by the applicant with which he used to keep threatening her and torturing her and the status report dated 11.11.2021 shows that there was a video dated 25.06.2020 containing a mobile screen recording of a whatsapp video call between the petitioner and the prosecutrix in which the prosecutrix is nude and taking a bath in the bathroom and in the second video the applicant/petitioner and the prosecutrix were getting married at a place which looked like a temple.

19. The factum that the petitioner had in his possession a mobile screen recording of a whatsapp video call between him and the

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
18:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

prosecutrix in which the prosecutrix was nude and taking a bath, cannot be overlooked specifically in view of the submission that has been made by the prosecutrix through her statement under Section 164 of the Cr.P.C., 1973 that the petitioner had also sent an obscene video to her brother with also threatening him to send her back to his house or he would make the video viral,- are aspects which cannot be overlooked despite the factum that the prosecutrix had since been married on 29.09.2020 to the petitioner.

20. Though, Vipul and Bala, the co-accused in the instant case are stated to be on bail, the same *per se* does not suffice for the grant of bail to the applicant in the instant case.

21. Undoubtedly, in the photographs of the marriage, the prosecutrix does not seem unhappy and is rather seen smiling, but the statement that she makes through her statement under Section 164 of the Cr.P.C., 1973 is to the effect that the petitioner even after assaulting her after the marriage, used to take her photographs and put them on the facebook to show that she was very happy and that the petitioner's brother also used to ask her to keep laughing and to get videos made without clothes and that though she attempted to run away from the house of the petitioner, she had been brought back by Vipul, Bala and Mohit and that she was only able to escape when she had been able to take the mobile of the petitioner when he was sleeping on 28.11.2020 when she called the police, are aspects which at this stage cannot be overlooked.

22. Furthermore, the prosecutrix had stated that the petitioner had given his age falsely at the time of the marriage as he had not attained

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.11.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

the age of 21 years, which aspect has also been verified by the Investigating Agency as per the status report dated 11.11.2021, that the applicant had to submit a false affidavit qua his date of birth is also an aspect which necessitates the drawing of an adverse inference against him presently.

23. Taking into account thus, the gravity of the allegations levelled against the applicant specifically in view of the factum that his mobile phone contained a mobile screen recording of a whatsapp call between him and the prosecutrix where the prosecutrix was found nude taking a bath and the factum that the petitioner allegedly transmitted the obscene photographs of the prosecutrix to the prosecutrix's brother bringing him *prima facie* within the domain of Section 67 of the IT Act, 2020, this Court does not consider it appropriate to grant bail to the applicant.

24. In view thereof, the prayer made by the applicant vide the present bail application i.e. Bail Appl. No.3852/2021 seeking the grant of bail in relation to FIR No.554/2020, PS Prem Nagar under Sections 323/363/366/376D/199 of the Indian Penal Code, 1860 r/w Section 12 of the POCSO Act, 2012 and Section 67 of the IT Act, 2020 is declined.

25. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place.

ANU MALHOTRA, J.

DECEMBER 08, 2021

Neeta Chopra /sv

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 08.12.2021
16:16:41
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.