



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 09.03.2022

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Pronounced on : 22.04.2022

+ BAIL APPLN 145/2022 AND CRL.M.A. 890/2022 & CRL.M.A. 4103/2022

MANISH KUMAR

..... Petitioner

Through: Mr. Jatin Kumar, Mr. Manish Kumar
and Mr. Ashish Shukla, Advocates.

Versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Seema Bhati, PS Ashok
Nagar.

Ms. Tanya Agarwal, Advocate from
DHCLSC and Ms. Eliza, Advocate
for the complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.



1. This is a petition filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in FIR No. 585/2021 under Sections 376(2)(n)/377/328/506 IPC registered at P.S. New Ashok Nagar.

2. In brief the facts of the case are that the instant FIR No. 585/2021 dated 18.11.2021, U/s 376(2)(n)/377/328/506 IPC was registered at P.S. New Ashok Nagar, on the basis of Zero FIR No. 0001/21 dated 07.10.21 U/s 376(2)(n)/377/328/506 IPC registered at P.S. Seelampur, Delhi, which was lodged on the complaint of the prosecutrix. The prosecutrix has alleged that she met a boy namely Manish Kumar Mishra @ Monu (Petitioner herein) S/o Lai Bahadur Mishra R/o Pure Durgadeen Tiwari, Bahorikpur, Purabgaon, P.S Gauriganj, Amethi Distt, U.P., through Facebook on 05.08.2019 and thereafter, they started talking with each other. In the first week of September 2019, Manish called her to go to Dehradun for celebrating his birthday, to which she agreed and on reaching Dehradun, they checked in to a hotel where she was provided breakfast by Manish and after consuming it, she felt uncomfortable and she laid down on bed for rest but she fell asleep. After waking up, she found herself undressed and covered in only bedcover. When she asked Manish what had happened, he said that he had engaged in sexual relations with her and he convinced her that he loves her and would marry her. After a while, he had also called her to his rented room i.e., H. No. B-44, New Ashok Nagar, Delhi, where he forcefully made sexual relations with her by blackmailing her and showing her obscene photos and videos of her with him and also, threatened her that he would send it to her family members if she refuses to have sexual



relations with him. Thereafter, he also kept her with him in a rented flat at H. No. 63/64, Room No.16, U- Block, DLF Phase III, Gurgaon, from 23.10.2019 to 19.03.2020 and he used to threaten her that if she will not follow her instructions, he would kill her and her family and also, continued to sexually and physically assault her. He kept sexually assaulting her till 10.03.2021, but did not marry her. Further, he continued contacting her through phone calls and used to ask her to meet him and threatened her that he would harm her if she refused to meet him. Hence, the instant FIR was lodged on 18.11.2021.

3. I have heard the learned counsel for the petitioner, learned APP for the State assisted by the Ld. DHCLSC counsel for the complainant and perused the status report filed by the state.

4. It is submitted by the learned counsel for the petitioner that petitioner has been falsely implicated in this case and the relationship between the petitioner and prosecutrix was consensual. It is further submitted that the petitioner and prosecutrix became friends through Facebook in the year 2019 and were in a live-in relationship for about four months and had also travelled out of town. It is further submitted that the petitioner and the prosecutrix even went to Dehradun where they stayed for about three days and the allegations against the petitioner that some stupendous substance was given by him in the food/drink to the prosecutrix when they were in Dehradun are false and frivolous. It is further submitted that photographs of petitioner and prosecutrix were clicked by the mobile phone of the



prosecutrix and the said photographs were posted on Facebook by the prosecutrix herself. It is further submitted that in order to defame the petitioner she has also uploaded the entire FIR on her Facebook. It is further submitted that the said photographs of the petitioner and the prosecutrix were taken when they were on trip to Dehradun, which shows her in a very happy disposition. It is further submitted that the allegations of transferring money online to the petitioner are false and that both the prosecutrix and petitioner transferred money to each other for their daily needs/ expenses as they were living in a live-in relationship. It is further submitted that the allegation against the petitioner of obtaining loan of Rs 5 Lacs from HDFC bank in name of prosecutrix, is not true and no such loan was applied by the petitioner. Lastly, it is submitted that as per the FIR, the last incident occurred on 10.03.2021 and the FIR was registered on 18.11.2021, therefore there is a delay of around 8 months in lodging the FIR and the prosecutrix has also refused for her internal medical examination in MLC 451/2021 dated 05.10.2021.

5. On the other hand, Ld. APP for the State assisted by the Ld. DHCLSC counsel for the complainant, has vehemently opposed the bail application and submitted that the allegations against the petitioner are grave and serious in nature. It is further submitted that on 27.10.2021, statement of prosecutrix got recorded under Section 164 Cr.P.C., wherein she has supported her case. It is further submitted that on 03.01.2022, a Complaint vide Dy No. 03 Dt. 03.01.2022 SHO/NAN was received at P.S. in which the prosecutrix has alleged that the petitioner is threatening her through WhatsApp messages



but she has deleted the same. It is further submitted that the certified CDR of the mobile phone of prosecutrix and petitioner was obtained and as per the CDR, prosecutrix and petitioner were found to be in contact with each other. It is further submitted that the petitioner was absconding and was not joining the investigation, therefore, NBW were issued against him on 10.01.2022, however, after getting interim protection on 17.01.2022 from this Court, the petitioner has joined the investigation on 19.01.2022 and produced his mobile phone which was seized through seizure memo and the same was deposited to FSL Rohini on 14.02.2022 for expert opinion and it's FSL result is awaited. It is further submitted that on 15.02.2022, the petitioner has again joined the investigation and identified the hotels situated in Haridwar, Lucknow and Gurugram where entries related to stay of prosecutrix and petitioner were found, however, the petitioner could not identify the hotel in Dehradun.

6. Ld. APP assisted by the Ld. DHCLSC 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.

7. In the instant case, no doubt, there is a delay of 8 months in recording of the FIR but what would be the fate of the same and its effect on the case will be seen during the course of trial.

8. In the present case, as per the Status Report, the petitioner has joined and is cooperating in the investigation. On 19.01.2022, the petitioner has produced his mobile phone which was seized through seizure memo and the same was deposited to FSL Rohini on 14.02.2022 for expert opinion, the result of which is awaited. On 15.02.2022, the petitioner again joined the investigation and had identified the hotels situated in Haridwar, Lucknow and Gurugram where entries related to stay of prosecutrix and petitioner were found and collected. Perusal of the Status Report further shows that certified CDR of the mobile phone of prosecutrix and petitioner has reflected that they were in contact with each other.

9. As far as the allegation of the prosecutrix that the petitioner is threatening her through WhatsApp messages is concerned, this aspect of the matter can be taken care of by putting stringent condition on the petitioner.

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



11. Keeping in view the fact that the petitioner is joining and cooperating in the investigation and has no previous involvements, the interim protection granted to the petitioner vide order dated 17.01.2022 is made absolute and it is directed that in the event of arrest, the petitioner be released on anticipatory bail subject to his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the concerned Arresting Officer/Investigating Officer/SHO of the concerned Police Station and also subject to the following further conditions:

- (i) The petitioner shall furnish his mobile number to the concerned Investigating Officer, which shall be kept operational at all times during the pendency of the trial.
- (ii) The petitioner shall not directly or indirectly try to get in touch with the prosecutrix or any other prosecution witnesses, either physically or through any electronic mode and shall not try to threaten the prosecutrix or other prosecution witnesses or tamper with the evidence.
- (iii) The petitioner shall regularly appear before the Trial Court during the pendency of the trial.
- (iv) In case of change of contact details/residential address, the petitioner shall promptly inform the same to the concerned Investigating Officer as well as to the Trial Court.



12. The bail application is disposed of in the above terms and all the pending applications, if any, are also disposed of accordingly.

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

RAJNISH BHATNAGAR, J

APRIL 22, 2022/AK

