



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 21.07.2022

Date of decision: 28.07.2022

+ BAIL APPLN. 2062/2022

ZEESHAN KHAN

..... Applicant

Through: Mr. Pardeep Teotia, Mr. Harmeet Singh Gulati, Mr. Abhinav Gour & Mr. Naman Shankar, Advocates.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Shoaib Haider, APP for State with SI Avaneesh Kumar, SI Bharti. Ms. Ruchika Sharma, Advocate for complainant.

**CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA**

JUDGMENT

ANU MALHOTRA, J

1. The applicant- Zeeshan Khan, vide the present application seeks the grant of anticipatory bail in the event of arrest in relation to FIR No.288/2022, PS Jagatpuri under Sections 376/506 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012 submitting to the effect that the applicant has been falsely implicated in the instant case, that the allegations qua the incident stated in the complaint of the mother of the stated victim have never taken place and that the complaint has been filed to tarnish the image and prestige of the



applicant and his family members who carried deep roots in society; that the applicant has clean antecedents and has never been found guilty for violating the law of the land; that he is ready to join the investigation of the case; that his arrest would decimate his future socially and professionally and will ruin his entire family and that there is no recovery to be effected from him nor at his instance.

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

3. The State and the complainant have vehemently opposed the prayer made by the applicant seeking the grant of anticipatory bail.

4. As per the FIR registered on 27.04.2022 on the complaint of the mother of the victim, the typed complaint was presented by the complainant Jinnat W/o Md. Tanveer who also produced the victim girl who was counseled and on the basis of the complaint presented by the complainant, the FIR was registered under Sections 376/506 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012.

5. As per this complaint lodged by the mother of the victim against the applicant herein named Zeeshan, his mother named Salma Tyagi, his sister named Rida and his father named Mohd. Sufi Islam dated 27.04.2022, she stated that she has three children named Ali Tanveer, Muskan and 'Z' (the victim) of whom 'Z' has her youngest daughter, a minor then aged 17 years and that the accused persons were known to them and resided in their neighborhood near Ambedkar Gate, Jagat Puri, Delhi and that the accused/ applicant-Zeeshan is the friend of her son Ali Tanveer and had come to their house 2-3 times and that she saw that her daughter 'Z' was disturbed from the last few days and



was facing mental stress and there was a lot of irritability in her behaviour and that on the night of 25.04.2022, she found her daughter 'Z' was weeping alone in the room and she asked her what the matter was, why was she weeping, then, 'Z' hugged her mother, the complainant while weeping and told her that the neighbour boy Zeeshan (applicant herein) forcibly had made physical relations with her and that Zeeshan has so done not only once but several times he had made physical relations with her forcibly and that the first time, Zeeshan had made physical relations with 'Z' at his house when she was 13 years old and that Zeeshan had also taken/captured obscene photographs/videos because of which he was blackmailing 'Z' and used to call her at his house and kept on making physical relations with her forcibly.

6. The complainant has stated that her daughter 'Z' also told her that in the first week of February 2022, she learnt that she has conceived because her M.C. has stopped and has suffered with swelling on her body, and thus, 'Z' told about the same to Zeeshan (applicant herein) but Zeeshan (applicant herein) gave her a kit and after conducting the test, it was clear that 'Z' was pregnant, and she told the same to Zeeshan (applicant herein), whereafter, Zeeshan's father Sufi Islam, his mother Salma Tyagi and his sister Rida Khan learnt of the same and on 21.02.2022, in collusion and conspiracy with each other, these persons called her to their house, where they administered some pills to 'Z' (the victim) forcibly and after taking the same, 'Z' suffered with stomach ache and in this manner, all of them aborted her pregnancy and threatened her not to tell anyone



about the same or else she would be killed and Zeeshan (applicant herein) threatened 'Z' that he had made a video of her obscene photographs and had her photographs also and if she complained about the matter, then he would make the photographs viral and would bring her family to disrepute.

7. As per the complaint, on the basis of the said videos and footage, Zeeshan i.e. the applicant herein blackmailed 'Z' several times and kept on making physical relations with her against her wishes. As per the said complaint, 'Z' kept on suffering from bleeding and on 20.03.2022, Zeeshan's sister Rida, Raja and Zeeshan's friend Kundan took 'Z' to one lady clinic, Tyagi Foundation Building (Mob.No.011 22375975), Near Karkardooma Court, Delhi, where they in collusion with the doctor, got the foetus of 'Z' removed whereafter, 'Z' got scared and went into depression and also became weak physically and this fact came into the notice of the complainant and her family members, then they scolded 'Z' but she was under depression and was facing mental and physical pain. The complainant further submitted through her complaint that Zeeshan and his family members are strong persons, that his mother has a good approach and that the complainant apprehends danger to her and her family from the accused persons that they would destroy the life of her daughter 'Z' because of which she is in depression.

8. *Inter alia*, the complainant has stated through the complaint on the basis of which the FIR was registered, Zeeshan lastly committed rape on her daughter 'Z' at his house on 19.01.2022. The complainant



also sought protection to her and her family members from the accused persons.

9. Reliance was placed on behalf of the applicant on the observations made in the order dated 04.06.2022 of the Court of the learned ASJ-01 & Spl. Judge (POCSO)/ Shahdara/ Delhi qua the application of the applicant Zeeshan seeking grant of anticipatory bail, which application was dismissed vide the said order, wherein, it had been observed to the effect:-

“.....
.....

The photographs and the transcript of chat between the victim and the applicant, who is the prime accused, although do not rule out deep love/ romantic relationship between them (prime accused Zeeshan and the victim/ prosecutrix) as an option, yet at the same time, it is settled preposition of law that "consent by minor to sexual intercourse is unacceptable in law".

*The victim/ prosecutrix who is major now, has been afforded opportunity to address her submission on the present application and she has registered her objection to the grant of bail to the applicant/ accused.
.....”*

10. Reliance was also placed on behalf of the applicant on the photographs that have been placed on the record as Annexure-P7 to the application to submit to the effect that they do not depict any forcible assault or pressurization by the applicant on the prosecutrix and rather indicates a very friendly, cordial relationship and close contacts between the applicant and the victim ‘Z’.

11. *Inter alia*, it has been submitted on behalf of the applicant that the status report dated 11.07.2022 that has been submitted under the



signatures of the SHO, PS Jagatpuri by the State, it has been stated vide paragraph 4 thereof to the effect:-

“4. During the course of investigation School Documents of victim's girl issued from Roseri Public School Delhi and DAV Public School Delhi have been obtained, on enquiry found which documents issued from Rosary Public School on 27-07-2006, which Is a nursery admission form and wherein victim's age mentioned as 01-01-2003 and 2nd certificate is issued from DAV Public School on 18-05-2010, which is admission form of First class, wherein Date of birth of victim's girl is mentioned as 01-01-2005.”,

with it thus, having been submitted on behalf of the applicant that in as much as, the age of the victim was 01.01.2003 as per the Nursery Admission Form issued by the Rosary Public School on 27.07.2006, the prosecutrix was a major and not a minor submitting to the effect that if the document issued by the DAV Public School for admission in the 1st Class showing the date of birth of the prosecutrix to be 01.01.2005 which document is indicated to have been issued on 18.05.2010, was accepted, then the prosecutrix would have been aged only 1½ years at the time of nursery admission,- which it is submitted cannot be believed to be true.

12. On behalf of the State and the complainant, it has been submitted that the applicant has committed penetrative sexual assault on the victim ‘Z’ multiple times and has made an obscene video and has taken pictures of the victim, that the applicant is the prime accused in the instant case; that his custodial interrogation is required to conclude the investigation and collect the evidence and taking into



account the gravity of the offence and the conduct of the applicant, the prayer made by the applicant seeking the grant of anticipatory bail be declined.

13. *Inter alia*, the State has submitted that the applicant is evading arrest. The State has also placed on record the birth certificate of the victim issued on 07.01.2005 by the Govt. of NCT of Delhi showing the date of birth of a female child to the parents of 'Z' on 01.01.2005. The CBSE marksheet of the victim 'Z' issued on 03.08.2021 for the Secondary School Examination, 2021 gives the date of birth of the victim 'Z' who has named as 'MT' in this birth certificate to be 01.01.2005.

14. The prosecutrix through her statement under Section 164 of the Cr.P.C., 1973 dated 28.04.2022 stated to the effect that she was 17 years of age, that she did not recall the exact date but that in September, 2020, the applicant herein named Zeeshan had acted forcibly with her, had taken her photographs with himself and had started blackmailing her and used to call her to him forcibly and used to rape her and he did this several times and once when he was intoxicated, he beat her a lot and when she told him that she was pregnant, then he told his mother that this child was not his and of someone else's and his mother called her to their house and made her take pills and told her that no one should know of it and for a month, the prosecutrix had heavy bleeding and became very weak and the sister of the applicant then took the prosecutrix to a doctor, where they told her that there was an apprehension of an ovarian cancer if she was not treated immediately and after some days, her abortion was got



done, whereafter, she has not been stable and the abortion was done at the Stree Hospital, KKD.

15. The prosecutrix had further stated that Zeeshan (applicant herein) used to frighten and threaten her and had also gone to her aunt's (Mausi) house, where he told of their marriage and abortion and that he had used to disrepute her everywhere and she had not told anything to her family members. The prosecutrix also stated that Zeeshan (applicant herein) had put her photographs on to his social media accounts without her permission and had also made a fake ID of hers and put her photograph with him on the same.

16. Undoubtedly, the photographs that are placed on the record of the present bail application as Annexure-P7, do not show any compulsion or fear or distress that the prosecutrix is facing when being with the applicant. However, the factum that the birth certificate of the victim 'Z' and the CBSE marksheet give her date of birth to be 01.01.2005 which documents have presently to be *prima facie* believed despite the factum that as per the status report dated 11.07.2022 submitted by the State, there is also a nursery admission form issued on 27.07.2006 giving the date of birth of the prosecutrix to be 01.01.2003 but there is also another admission certificate of the DAV Public School mentioning the date of birth of the prosecutrix as being 01.01.2005.

17. In view of the birth certificate issued by the Govt. of NCT of Delhi, the correctness and authenticity of which would have to be presumed, coupled with the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix that the applicant had raped her



forcibly several times from the time when she was 13 years of age, coupled with the claim of the prosecutrix that the applicant had also put her photographs along with the photographs of the applicant on the social media, thus, tarnishing her image and also taking into account the factum of the prosecutrix having had to undergo an abortion, all point to the alleged complicity of the applicant. Thus, in view of the gravity of the allegations levelled against the applicant, there is no ground whatsoever for grant of anticipatory bail to the applicant.

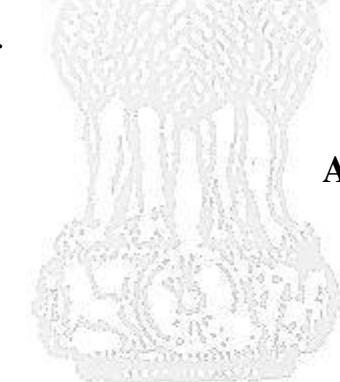
18. The application is thus, declined.

19. Nothing stated hereinabove shall, however, amount to any expression on the merits or demerits of the trial, if any, that takes place in the instant case.

JULY 28, 2022

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ANU MALHOTRA, J.



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