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

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+ BAIL APPLN. 3252/2021

*Judgement reserved on: 04.03.2022*  
*Judgement pronounced on: 22.03.2022*

GAURAV ARORA

..... Petitioner

Through: Mr. U.M. Tripathi, Advocate.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. M.S. Oberoi, learned APP for the  
State with WSI Sangeeta, PS-Nihal  
Vihar.

Ms. Inderjeet Sidhu, Advocate for  
Complainant.

**CORAM:**  
**HON'BLE MR. JUSTICE TALWANT SINGH**

**TALWANT SINGH, J.:**

1. The petitioner has moved this application seeking anticipatory bail in case FIR No. 1048/2021 under Section 354 of Indian Penal Code, 1860 (hereinafter referred to 'IPC') and Section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to 'POCSO Act') at PS Nihal Vihar.



2. It has been submitted on behalf of the petitioner that the marriage of the applicant/accused with the complainant was solemnized in the year 2009. It was love-cum-arranged marriage and as such the same was dowry-less. Out of this wedlock, two children were born; a baby girl on 07.09.2014 and a boy on 16.10.2018. Since beginning, the behaviour of the complainant was not good towards the applicant and her mother. She was pressurizing the applicant to sell the matrimonial home, which was registered in the name of the mother of the applicant.

2.1. On 23.06.2021, the complainant made a complaint to police that the applicant had kidnapped her son on which applicant was called to the police station where he had stated that he and his son had gone to a shop at the instance of his son. The matter was resolved. The complainant went away with the children after taking her jewellery on 24.06.2021 extending threat that she will drag the applicant and his family members by filing false cases. Thereafter, the complainant lodged a complaint alleging demand of dowry. The applicant attended CAW Cell on each and every date of hearing. The efforts for conciliation made at CAW Cell failed as complainant flatly refused to join the company of the applicant on 10.08.2021. Thereafter the complainant went to police station at Nihal Vihar on 14.08.2021 and she levelled allegation of sexual assault committed by the applicant. The applicant was telephonically called to the police station and the complainant was asked to give a written complaint. The applicant satisfied the queries made by the police officials and had joined the investigation. At about 9 PM he was released by the police officials with further direction to join investigation on 16.08.2021. The



applicant visited the police station on 12 'O' clock on 16.08.2021, where he was detained in the police station till 9 PM. Later on he was released with a direction to visit the police station as and when directed. The applicant was not provided with the copy of the complaint/FIR.

2.2. On 17.07.2019, the applicant moved an application before this Court for directing the police to supply copy of the FIR, upon which the Hon'ble Court directed the IO to provide the copy of the FIR to counsel for the applicant. On 19.08.2021, the copy of the FIR was mailed to him and after going through the content of the same, it came to the knowledge of the applicant that certain false allegations were made against him, which are totally false and frivolous and the girl child has been tutored by the complainant to depose against the applicant with intention to extort money from the applicant by creating pressure of arrest. No such incident had ever occurred or could not be presumed to have taken place as the entire family members were present in the said room.

2.3. It is further submitted that the case lodged against the applicant is a misuse of process of law in order to satisfy personal goal of the complainant. Initially, the applicant had moved his anticipatory bail application before learned ASJ but the same was dismissed on 26.08.2021. The applicant apprehends danger of his arrest; hence the present petition has been moved. No custodial interrogation is required as the applicant has already participated and cooperated in the investigation, which is almost complete. The applicant has clean antecedent and has been never involved in the commission of any crime. No recovery is to be made at the instance of the applicant; the applicant has undertaken not to induce any person acquainted with the facts of the case and



further not to tamper with the evidence or the witnesses in any manner and to abide by any conditions to be imposed by this court.

3. Notice was issued on this bail application on 03.09.2021. Notice was accepted by the complainant, who was present through video conferencing. It was ordered not to take any coercive action against the petitioner, subject to his joining investigation as and when directed by the Investigating Officer. Complainant was asked to file written submissions. Status report was emailed to the Court on 27.09.2021. The complainant informed the Court that the application was earlier involved in a case of eve-teasing but this fact was not verified by the Investigating Officer. Status report was found silent on this aspect. It was also noted that Status report was silent on the issue of mortgage of the jewellery by the complainant to Muthoot Finance and IO was directed to verify the said fact and indicate as to when the petitioner was given notices to join the investigation and whether pursuant to the same, he joined the investigation or not.

4. On 29.10.2021, it was noted that Additional Status Report has been filed. Arguments in this matter were heard on 04.03.2022 and the matter was adjourned for orders.

5. Status report filed by the prosecution states that daughter of the petitioner and complainant was aged about 7 years and the son is about 2 years and six months old. The brief facts about the registration of the FIR have been reiterated in the following words in the Status report:-

*“On 21-06-2021, she was suffering from ladies problem and she had taken medicines. At about 1.00 AM, her daughter P raised an alarm*



*and shouted "Papa kya kar rahe ho bar bar meri payjama kyo utar rahe ho". Suddenly, the complainant woke up on hearing this. She pushed her husband and scolded him saying that "you don't have any knowledge in inebriated state that you are sleeping with your daughter or your wife". At that time her mother-in-law who was also sleeping in that room woke up hearing the noise. When the complainant objected the act of her husband than her mother-in-law took favour of her son and asked the complainant not to disclose such kind of matter as it relates to dignity of family. Her mother-in-law further stated that on disclosing such kind of secret family matters the family would be in problem as no body will marry "P". The complainant further stated that her husband Gaurav Arora / the petitioner had pulled her daughter's pants in inebriated state but he did nothing wrong with her daughter.. The complainant came to PS along with victim "P", who was got counseled from NGO and got medically examined vide MLC No 263/21 at Sanjay Gandhi Hospital, Mangolpuri Delhi (MLC is annexed as annexure "A"). Thereafter, on the statement of complainant and perusing MLC examination, a case vide FIR No. 1048/21 u/s 354 IPC and 8 POCSO Act was registered at PS Nihal Vihar and investigation was taken up WSI Sangeeta".*

5.1. The statement of the victim was recorded on 16.08.2021, wherein she has corroborated the incident detailed in the complaint. A copy of the complaint lodged by the complainant at PS Dwarka North dated 15.07.2021 was also collected where the complainant had mentioned about this incident, which had happened with her daughter along with details of the matrimonial dispute. The case vide FIR No. 648/ 21 dated 26.08.2021 under Sections 498A/406/34 IPC was registered at PS Dwarka North. The petitioner had visited the police station on 04.09.2021 but he refused to join investigation and replied that he would join investigation along with



counsel but he did not turn up on next date and thereafter till date he had not joined investigation.

5.2. Additional status report was filed on 22.10.2021. In para 2, it was noted that no case of molestation was registered against the petitioner as claimed by the complainant. However, there was a PCR call on 05.11.2015 regarding quarrel but by the time the police officials reached the police station, the matter was compromised amicably. The petitioner had joined investigation on 25.09.2021 after notice was served upon him. As far as the fact regarding mortgage of jewellery by the complainant to Muthoot Finance is concerned, the same stands verified. The complainant had raised a gold loan of Rs. 40,300/- on 05.09.2019 against gold ornament weighing 22.8 gm. The report received from Muthoot Finance about the mortgage is annexed as Annexure-C, which shows that the said loan was renewed on 25.07.2020 and 08.06.2021 and outstanding balance as on date is Rs.39,950/-.

6. Learned counsel for the petitioner has argued that matrimonial dispute between the petitioner and the complainant wife is pending. She had left the matrimonial home on 24.06.2021 and thereafter she had lodged a complaint at CAW Cell, Sector-9 Dwarka alleging demand of dowry on 10.08.2021. The complainant refused to join the company of the applicant and the conciliation proceedings failed in the CAW Cell. Thereafter, she proceeded to lodge the present FIR against the applicant/petitioner on 14.08.2021. As per the contents of the FIR, the alleged date of offence was



22.06.2021, and there is no valid explanation as to why the complaint was lodged with the police after passage of such a long time.

6.1. It has been further submitted that the petitioner has already joined investigation and no recoveries are to be made from him; statement of the victim has already been recorded under Section 164 Cr.P.C. and there is no apprehension of the petitioner influencing the victim/complainant or other witnesses as the witnesses no longer reside with him and an FIR under Sections 498A/406/34 IPC has already been registered against the petitioner at the instance of the complainant. Moreover, the complainant is in the habit of making false allegations against the petitioner as she had mentioned about an eve-teasing case against the petitioner but as per the Status Report filed by the police, no such case was ever registered against the petitioner. Even in the other criminal proceedings, she had made false allegations regarding jewellery, whereas she had mortgaged her jewellery with Muthoot Finance on her own and a letter in this regard is already on record as Annexure-C with the Additional Status Report.

7. On the other hand, learned APP appearing for the State as well as advocate for the complainant have submitted that offences are serious in nature and there is every likelihood of the petitioner influencing the witnesses or not cooperating in investigation of the matter and of tampering with the evidence.

8. After hearing both the sides it is to be noticed that the alleged incident is dated 22.06.2021, but the FIR was lodged on 14.08.2021 and as per the petitioner, the complainant had left the matrimonial home on



24.06.2021 along with both the children and her belongings and thereafter she had approached the CAW Cell, where the conciliation talks had failed and four days thereafter the present FIR was registered. The allegation regarding eve-teasing against the petitioner and regarding misappropriation of gold jewellery made by the complainant against the petitioner have been found to be false as per the Additional Status Report filed by the police. It, *prima facie*, appears to be a case of matrimonial discord where the small child may be used as an instrument by the complainant to settle scores with the petitioner. The prosecution has failed to point out as to why custodial interrogation of the present petitioner is required as no recoveries are to be made at the instance of the present petitioner, who has otherwise joined the investigation as and when called for by the police officials. In my view, it is *prima facie* a fit case for grant of anticipatory bail to the petitioner.

9. Without commenting on the merits of the case, I am inclined to admit the present petitioner to anticipatory bail on the following conditions:-

- (i) The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (ii) The petitioner shall not leave India without the previous permission of the concerned Court;



(iii) The applicant shall furnish a mobile number to the IO within one week and keep the mobile location on at all times.

(iv) The applicant shall appear before the IO/Trial Court on every date, when he is called or the case is listed.

10. Consequently, in the event of arrest, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount, subject to the satisfaction of the IO/SHO/learned Trial Court.

11. It is made clear that any observation made hereinabove is only the *prima facie*, view of this Court, which has no bearing on the merits of the present case. The case shall be duly investigated by the police authorities and neither the police officials nor the learned Trial Court shall get influenced by any observations made hereinabove, which are purely detailed above for the purpose of considering the anticipatory bail application of the petitioner.

12. The petition is accordingly disposed of.

**TALWANT SINGH, J**

**MARCH 22, 2022/nk**

*Click here to check corrigendum, if any*