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

% Judgment delivered on: 18.07.2023

+ BAIL APPLN. 715/2023, CRL. M.A. Nos. 5740-5741/2023

SULABH GUPTA

..... Petitioner

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Saurav Singh and Mr. Abhijit Mishra, Advocates.

For the Respondents : Mr. Satinder Singh Bawa, APP for State with SI Anita Meena, PS-Ashok Vihar.
Ms. Pooja Kumari and Mr. Amit Kumar, Advocates for Complainant along with Complainant in person.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is an application filed on behalf of the applicant under Section 438 of the Code of Criminal Procedure, 1973 seeking anticipatory bail in respect of the FIR No. 378/2022 registered at PS : Ashok Vihar, Delhi under Sections 498A/ 406/ 34 IPC, initially to



which the Sections 377 and 506 of the IPC, 1860 were subsequently added.

2. Learned counsel appearing for the applicant submits that on her own violation, respondent No.2 along with two minor children had left the matrimonial home in the month of October 2022. Learned counsel submits that since the matrimonial home was in the name of mother of the applicant, an injunction suit was accordingly filed by the mother of the applicant, by virtue whereof, an interim injunction order restraining the entry of respondent No.2 to the matrimonial home was passed.

3. Learned counsel submits that moreover by virtue of the order dated 01.03.2023, the learned Trial Court has enlarged the mother of the applicant on bail on the basis of the same facts.

4. Learned counsel submits that the respondent No.2 has all along been agitating only in respect of the dowry articles and no quarrel or any complaint was ever raised in respect of the offences under Sectionn 377 IPC, by the respondent No.2.

5. Learned counsel submits that apparently offence of Section 377 of the IPC was added only in the year 2022 that too, subsequent to the petition seeking divorce against the respondent No.2 filed by the applicant on 20.06.2021, to submit that the respondent No.2 has, only as a counter blast and a knee jerk reaction has falsely claimed the assault under the offences in Section 377 of the IPC.

6. Learned counsel submits that the entire thrust of the respondent No.2 is only on the dowry articles, which according to the counsel, the applicant is prepared to hand over even today.



7. Learned counsel also invites attention of this Court to the status report as filed by the State, particularly, to para 9 to submit that even the investigation authorities have themselves stated, based on the submissions of the respondent No.2, that a long period has elapsed since the marriage and she did not even want back the articles.

8. On that basis, learned counsel submits that there is no substance on merits at all in the allegations levelled by the respondent No.2 insofar as the applicant is concerned.

9. Most importantly, learned counsel submits that as per the admission of the respondent No.2 and State itself, the offence under Section 377 were alleged to have been committed way back in the year 2014.

10. Learned counsel submits that having regard to the aforesaid admission, the fact that there has been an immense delay in raising the complaint, would itself, create a doubt as to the authenticity and truthfulness contained in such false and wild allegations.

11. Learned counsel also submits that even the status report filed by the I.O., does not anywhere suggest that the applicant had not participated or joined the investigation as and when called upon by the Police Authorities.

12. Learned counsel refers to the judgment of *Munish Bhasin and others vs. State Govt. of (NCT of Delhi) and Another* reported in (2009) 4 SCC 45 to submit that the High Court or any court could not put any condition while granting anticipatory bail upon the applicant, as a pre-condition for such release for payment of maintenance etc. to the wife or child and such practice was deprecated by the Supreme Court.



13. Learned counsel next refers to the judgment of the Single Bench of the Telangana High Court in *Syed Inayath Ullah vs. State of Telangana* reported in 2022 SCC OnLine TS 337 to submit that once there has been a compliance of Section 41A Cr.P.C. by the so-called accused person, the Police Authorities cannot proceed to take any coercive action unless the provisions of Section 41A (4) of the Code of Criminal Procedure, 1973 are invoked first by the Authorities.

14. Based thereon, learned counsel for the petitioner submits that in the present case, so far as the applicant is concerned, no such action has been at all undertaken by the Investigating Authority.

15. On the aforesaid basis, learned counsel submits that the applicant be enlarged on anticipatory bail.

16. *Per contra*, Mr. Satinder Singh Bawa, learned APP appearing for the State at the outset refers to the provisions of Section 41(A) sub Section 3, to submit that the contentions raised by the applicant in context of Section 41A (4) are untenable.

17. Learned APP submits that so far as the aforesaid arguments are concerned, unless the applicant falls within the ambit of sub Section 3 of Section 41 (A), the question of invoking the provisions of sub Section 4 of the Section 41 (A) would not arise, coupled with the fact that the applicant was under the protection of this Court's interim order dated 03.03.2023 and, therefore, the question of the aforesaid sections being invoked, does not arise.

18. Learned APP for the State further refers to the status report as filed and submits that the issue is not merely in respect of the return of the dowry articles but also the fact that there is a heinous crime for the



offence under Section 377 of the IPC levelled against the applicant which need to be investigated as also the balance remaining jewellery articles and other valuable articles also need to be recovered by the Investigating Authorities.

19. Learned APP for the State also submits so far as the statement contained in para 9 of the status report regarding the respondent not requiring the articles is concerned, the same is only in respect of household articles, however, there is no such statement of the respondent in respect of the jewellery and other valuable items are concerned.

20. By referring to documents placed alongwith the status report, learned APP for the State submits that all the regular articles of usage in the household alone, have been admitted to be in the possession of the applicant and not the valuable articles.

21. Learned APP submits that this is untenable and in any case needs investigation to find out as to who is in possession of the said valuable jewellery items.

22. Learned APP further submits that the submission in respect of the offence under Section 377 being antiquity in nature because of the reason that the said offences are alleged to have been committed in the year 2014 is concerned, he submits that the same needs to still be investigated by the Investigating Authorities. The offences under criminal law whether old or new have to be first investigated to find out the truthfulness or the authenticity of such allegations, for which the custodial interrogation of the petitioner would be required.



23. Learned counsel for the respondent No. 2 also supports and reiterates the arguments addressed by the learned APP.

24. As a rebuttal, learned counsel for the petitioner refers to the para 6 of the Status Report to submit that the alleged bills, showing the purchase of the jewellery articles, has not been verified till date despite so many months having been passed and there could be no possible reasons to seek custodial interrogation of the applicant, which is covered by the judgment passed in *Arnesh Kumar vs. State of Bihar* reported in (2014) 8 SCC 273 on all fours.

25. Learned counsel further submits that by no stretch of imagination, could the prosecution prove the offences of 377 and inasmuch as there is no scientific and medical legal/ forensic test, which would shown any such assault having been taking place after nine years from the alleged year of offence.

26. This Court has heard the submissions of the learned counsel for the applicant and the learned APP.

27. So far as the submission of the learned counsel in respect of Section 41 (A) Cr.P.C. is concerned, and the judgment which had been relied upon by the learned counsel namely, *Syed Inayath Ullah vs. State of Telangana (supra)* of the Single Judge of the Telangana High Court is concerned, suffice it to observe that the said judgment was passed in the case registered under Section 406/ 420 read with Section 34 of the IPC. However, in the present case, apart from the allegations of offences under Sections 498A/ 406, a very serious offence of Section 377 read with Section 506 is alleged against the applicant.



28. Keeping that in view, it is clear that the reasoning arrived at by the learned Single Judge of the Telangana High Court in the aforesaid judgment, would obviously not being applicable to the present case.

29. So far as the issue of Section 41 A sub Section 4 is concerned, this Court agrees with the submissions made by the learned APP that unless the Police Authorities come to the conclusion that sub Section 3 of Section 41A has not been complied with, invoking provision of sub Section 4 of Section 41 A, does not arise.

30. In that view of the matter, the submissions of the learned counsel as also the judgment relied upon become untenable. Though, learned counsel for the applicant disputes the same since according to him, the Investigating Authorities had already given him a notice under Section 41A, which was much before the filing of the present application. Learned counsel also has relied upon the status report to submit that the status report itself admits to the fact that the applicant has joined the investigation, as and when required.

31. All these arguments would not be tenable in view of the fact that the offences under Section 377 have been alleged subsequently, which need to be in any case, enquired into by the Investigating Authorities.

32. Moreover, this Court tends to agree with the submissions of the learned APP for the State in respect of the list of articles, which are annexed to page 7, 8 and 9 of the status report to reach a conclusion that it appears untenable that there is not even a single valuable jewellery or item in possession of the applicant at all. If the said submission is at all, believed then it would be all the more a reason that the applicant is



interrogated to find out as to in whose possession the said valuable articles are, so far as the facts in the present case is concerned.

33. Keeping in view the aforesaid, this Court is of the considered opinion that the present applicant does not deserve to be enlarged on anticipatory bail and the bail application, as such is dismissed.

34. Observations made in the present judgment shall not be construed as an expression of opinion on the merits of the pending matter and shall also not be treated as a precedent for future references.

35. The interim orders, so passed, are also stand vacated.

36. The pending applications also stands dismissed.

TUSHAR RAO GEDELA, J.

JULY 18, 2023/nd

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