



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

% **Date of Decision: 13th July, 2023**

+ **BAIL APPLN. 3837/2022 & CRL.M.As. 27166/2022, 5098/2023
& 5099/2023**

PARVEEN SONEJA

..... Applicant

Through: Mr. Vikas Pahwa, Sr.
Advocate with Mr. Prabhav Ralli,
Ms. Namisha Jain and Mr. Ravi Kant
Yadav, Advocates

versus

STATE OF NCT OF DELHI

..... Respondents

Through: Mr. Aashneet Singh, APP for the
State with SI Raghubir Prasad, PS
Naraina
Mr. K. K. Manan, Sr. Advocate with
Ms. Udit Bali, Mr. Ajit Singh, Mr.
Komal Vashisht and Mr. Jatin Singh,
Advocates

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The present application has been filed under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for grant of anticipatory bail to the applicant in FIR No.73/2021 dated 30.03.2021 under Section(s) 364/354A/354B/406/498A/506/509/34 of the Indian Penal Code, 1860 (IPC) registered with P.S. Naraina, New Delhi.
2. Notice was issued and the Status Report was filed thereafter.
3. The facts disclose that the allegations in the FIR pertain to alleged offences committed on 29/30.05.2020 upon the complainant at the



matrimonial home where she was residing with her husband and in-laws. Thereafter, though the complainant left the matrimonial house on 03.06.2020, she only filed a complaint on 30.03.2021 and the original charge-sheet was filed under Section 173(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) for the offences punishable under Section(s) 354/354-A/354-B/406/498/506/509/34 of the Indian Penal Code, 1860 (IPC) and the applicant/ accused alongwith the other accused persons, was granted anticipatory bail vide order dated 06.08.2021 passed by the Learned Additional Sessions Judge, Patiala House Courts, New Delhi. Thereafter, a supplementary charge-sheet under Section 173(8) of the Cr.P.C. was filed on 30.11.2022 wherein Section(s) 376/511 IPC were added.

4. Learned senior counsel for the applicant submits that there has been a delay of more than nine months in filing of the afore-mentioned FIR. He, then, taking this Court through order disposal dated 17.12.2022 passed by learned ASJ disposing of an earlier bail application of the petitioner and other co-accused persons and through order dated 03.01.2022 passed by a learned Single Judge of this Court in CRL.M.C. 2050/2021 dealing with cancellation of bail application, submits that the issues concerning Section(s) 376/511 IPC were taken note of then as well. He also submits that filing of the supplementary charge-sheet is an after-thought as the offence under Section(s) 376/511 IPC were already alleged in the original complaint, in the FIR and statement under Section 164 Cr.P.C. qua which the preliminary chargesheet was filed under Section 173(2) Cr.P.C. He further submits that in supplementary chargesheet under Section 173(8) Cr.P.C. it was noted by the I.O. that no concrete evidence was found against the applicant.



5. He, then, relying upon ***Harshita Gandhi vs State*** [2022 SCC OnLine Del 2683] wherein also the FIR was filed after a belated period and it was observed by this Court that though it might not be enough for quashing of the FIR but, bail could be granted in such situation, submits that in a similar situation bail was granted. He then drew the attention of this Court to the Status Report wherein it is stated that after service of the notice under Section 41(A) Cr.P.C., the applicant had joined the investigation and also cooperated with it throughout.

6. Learned senior counsel for the complainant in rebuttal, drawing the attention of this Court to a judgement of the Hon'ble Supreme Court in ***XXXX vs State of Karnataka & Anr.*** Order dated 17.11.2022 [Criminal Appeal no.1981/2022], submits that considering the gravity of the offence involved and statement of the prosecutrix, applicant should not be granted bail. He also submits that the complainant in her statement recorded under Section 164 Cr.P.C. on the very next day of her making the complaint, i.e., 31.03.2021, has categorically described the offence of Section 376 IPC in detail as committed upon her.

7. Learned APP, relying upon ***Pratibha Manchanda & Anr. vs. State of Haryana & Anr.*** Order dated 07.07.2023 [Criminal Appeal No.1793/2023], has also supported the case of the complainant and opposed the grant of bail to the applicant considering the heinousness of the offence.

8. This Court has heard the learned (senior) counsels for the parties and has gone through the documents on record.

9. While granting anticipatory bail to the applicant, no doubt this Court has to consider the nature and the gravity of the offence alleged, however, this Court is also to consider the role of the applicant, which is yet to be established since there are no medical documents which show that



complainant was administered anything by the applicant. It is a matter of fact that the FIR was indeed lodged after a delay of nine months. It is also not in dispute that the complainant has since been returned few stridhan items including a BMW Car. As per Investigating Officer, finding its mention in the supplementary chargesheet, no further custodial interrogation of the applicant is required and in any event, he has since joined the investigation after receiving the notice under Section 41(A) Cr.P.C.

10. As was considered by this Court in **Harshita Gandhi** (supra), bail can be granted under circumstances like the present scenario wherein, though chargesheet has been filed but, in all likelihood, the trial in the matter is going to take long. In the considered opinion of this Court, during the said period of trial, there is no occasion for the applicant to keep him languishing behind the bars, as it would serve no purpose especially in view of the aforesaid and as it is a trite law that no person is presumed guilty until proven otherwise. The applicant has no other prior antecedents than those aforesaid.

11. In **XXXX vs State of Karnataka & Anr.** (supra), the Hon'ble Supreme Court was dealing with a case involving regular bail under Section 439 Cr.P.C. while the present case is involving anticipatory bail under Section 438 Cr.P.C., therefore, the same is not applicable. Similarly, **Pratibha Manchanda & Anr. vs. State of Haryana & Anr.** (supra) is also not applicable under the facts of the present case as the exact role of the applicant is yet to be established as there are no medical documents about him administering anything to the complainant.

12. In view of the aforesaid, this Court deems it a proper case for grant of anticipatory bail. Accordingly, the applicant is granted anticipatory bail in Supplementary chargesheet under Section 173(8) Cr.P.C. filed in FIR



No.73/2021 dated 30.03.2021 under Section(s) 364/354A/354B/406/498A/506/509/34 IPC registered with P.S. Naraina, New Delhi. In the event of his arrest, the applicant shall be released after furnishing a personal bond in the sum of Rs.1,00,000/- (One Lac) alongwith one surety of the like amount by a family member/friend having no criminal case pending against them, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. Applicant shall not leave the National Capital Territory of Delhi without prior permission of this Court and shall *ordinarily* reside at the address as per the Trial Court records. If he so wishes to change his residential address, he shall immediately intimate about the same to the I.O. by way of an affidavit.
- ii. Applicant shall surrender his Passport to the I.O., within three days. If he does not possess the same, he shall file an affidavit before the I.O. to that effect within the stipulated time.
- iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Applicant shall join investigation as and when called by the I.O. concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- v. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned. The mobile location be kept on at all times.



vi. Applicant shall report to the I.O. at P.S. Naraina once every month in the first week of the month unless leave of every such absence is obtained from the learned Trial Court.

vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case or try to dissuade them from disclosing such facts to the Court or to any police officials.

13. It is clarified that the observations made herein are prima facie in nature only for the purposes of deciding the present application for grant of bail and thus need not be construed as an expression on merits of the matter.

14. Copy of the present order be sent to the concerned S.H.O. for necessary information and compliance thereof.

15. Accordingly, the present application for grant of anticipatory bail is disposed of in the above terms alongwith pending applications.

SAURABH BANERJEE, J.

JULY 13, 2023

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