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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20th January, 2023

Pronounced on: 03rd February, 2023

+ BAIL APPLN. 3354/2020

GAGAN KHOKHA

..... Petitioner

Through: Mr. Vaibhav Sharma, Ms. Urvashi
Sharma & Ms. Rupali Jain, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for State.
Ms. Sanjana Antil, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present application under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeks grant of anticipatory bail to the applicant in event of his arrest in case FIR No. 210/2020 dated 21.09.2020, under Sections 323/342/376/354/450/454/506/509/34 of the Indian Penal Code, 1860 ('IPC') registered at PS Rajinder Nagar.

2. Briefly stated, the facts of the present case are as under:

- i. An FIR under Sections 323/342/376 of the IPC was registered on 21.09.2020, upon a complaint wherein the complainant stated that she

lives alone alongwith her old-aged mother. She alleged that the applicant and members of his family harassed and threatened her mother and herself, physically and mentally. It was alleged that the applicant forcefully entered their house by breaking open the door and windows. It was stated that she had already made a complaint to the police to the effect that if anything were to happen to her, the applicant shall be held responsible.

- ii. She further alleged that on one occasion, the applicant entered their house by jumping over a wall on the back side and threatened to kidnap her, if she did not fulfill his wish to have sexual intercourse with her.
- iii. The complainant further alleged that Devendra Khokha, father of the applicant, who is also co-accused in the present FIR, followed her while she was walking home and passed sexually colored remarks. It was also alleged that the applicant and members of his family threatened that they will physically hurt the complainant's mother if she does not act as per their wishes.
- iv. The complainant alleged that on 20.09.2020, the applicant followed her to her house, pushed her due to which she fell and sustained some injuries on her back. Thereafter, the applicant bolted the front door of the house and dragged her into a room and tried to have sexual intercourse with her. It was further stated that when the complainant told him that she had already informed the police, the applicant ran away. Later, members of the applicant's family came over to her house and threatened her with dire consequences if she disclosed the incident to anyone.

- v. The statement of the complainant under Section 164 of the CrPC was recorded on 23.09.2020 in which she repeated the allegations made in the complaint.
- vi. During the course of investigation, the medical examination of the complainant was conducted on 20.09.2020, at Dr. Ram Manohar Lohia Hospital, New Delhi wherein it was recorded that no visible external injuries were noted. She submitted herself for an internal examination as well. The samples taken were sent to the Forensic Science Laboratory, Rohini, Delhi ('FSL') for analysis. The result of testing of the said samples was as under:

"exhibit-Cervical swab of complainant, Vaginal swab and slides of complainant and lower i.e. pyjama of complainant were subjected to DNA isolation. DNA was isolated from the source of exhibits. Identifier Plus PGR amplification kit was used for STR amplification and data was analysed by using Gene-Mapper IDx software. No male DNA profile was generated from the source of exhibits."

- vii. Chargesheet in the present case was filed on 08.02.2022, under Sections 323/342/376/354/450/454/506/509/34 of the IPC.
- viii. The learned Additional Sessions Judge/SFTC-02 (Central), Tis Hazari Courts, Delhi framed charges against the applicant for offences punishable under Sections 376/509/457/342/354/506/323/34 of the IPC *vide* order dated 16.08.2022.

3. Learned counsel appearing on behalf of the applicant submitted that the latter has been falsely implicated in the present case. The applicant, Gagan Khokha was stated to reside separately from his parents, at a house in Patel Nagar, which is nowhere near the residence of the complainant. The applicant has placed on record, residential proof with regard to the same. It was

submitted that the complainant began visiting the home of the applicant's father around May 2019, in order to take care of his ailing mother – Smt. Suman Khokha, who was suffering from 'Lymphnode Asphyxia'. The relevant medical documents have been annexed with the application.

4. It was submitted that subsequently, the complainant initiated a relationship with Devendra Khokha – the applicant's father. It was submitted that the relationship between both of them continued for some time and that they even stayed together at various hotels in and around Delhi on multiple occasions, expenses for which were paid for by the applicant's father. In support thereof, the applicant has annexed the relevant portion of the bank statements of his father. The applicant has placed on record invoices of Hotel Highway Xpress, NH-8, Jaipur-Delhi Highway, Behror, Alwar, Rajasthan, raised in the name of his father and the complainant on three different occasions – 11.01.2020 to 13.01.2020, 25.01.2020 to 27.01.2020 and 15.02.2020 to 17.02.2020.

5. Learned counsel for the applicant further relies on various voice recordings of calls exchanged between the complainant and his father and has placed on record, the relevant itemized call record to demonstrate that the complainant was in fact, having an affair with his father. It was submitted that the a dispute arose between the complainant and the applicant's family when they objected to the said affair and subsequently, the present FIR was registered.

6. Learned counsel for the applicant further drew the attention of this Court to the complaint dated 22.07.2020 sent to the SHO, PS Rajinder Nagar by Upasna Bhagat, the applicant's sister, against the complainant stating that the latter was visiting their house repeatedly, despite being asked not to do so.

7. *Per contra*, learned counsel appearing on behalf of the complainant submitted that even prior to the registration of the present FIR, several complaints were lodged by the complainant making allegations against the present applicant, and that the factum of the said complaints has been disclosed in the present FIR as well.

8. It was further submitted that on 22.07.2020, the applicant had physically assaulted the complainant and her mother and she had lodged a complaint in that regard, however, no FIR was registered.

9. Learned counsel appearing on behalf of the complainant further submitted that the applicant, in order to absolve himself, has created a false story about her having an affair with the applicant's father. It was submitted that the hotel bills produced by the applicant are all false and that the Investigating Officer, despite having knowledge of the said bills as early as in November 2020, never questioned the complainant about the same. It was submitted that the complainant lodged another complaint on 27.09.2022 alleging fabrication, tampering, manipulation, forgery/misuse of her documents including her Adhar Card, by the applicant, in order to substantiate the story of the alleged sexual relationship between her and his father.

10. It was further submitted that on 01.12.2022, another incident took place wherein the applicant and other co-accused persons threatened the life of the complainant and her mother. A complaint with regard to the same was lodged at PS Rajinder Nagar.

11. Therefore, in view of the threats made against her and her mother's life, learned counsel appearing on behalf of the complainant opposed grant of anticipatory bail to the applicant. It was also submitted that he is required for custodial interrogation, in order to collect evidence and strengthen the case of

the prosecution. In support thereof, learned counsel placed reliance on Adhri Dharan Das v. State of West Bengal, Appeal (CrI) no. 326 of 2005 decided on 21.02.2005 and Vinubhai Haribhai Malaviya & ors. v. The State of Gujarat & ors, Criminal Appeal nos 478-479 of 2017 decided on 16.10.2019

12. Learned APP appearing on behalf of the State has placed on record, a status report dated 18.01.2021, authored by SHO, PS Rajinder Nagar wherein the documents relied upon by the applicant have been verified. The relevant portion of the status report is as follows:

- “1. The bills of Hotel Highway Xpress N.H.8, Jaipur-Delhi Highway Behror, Alwar, Rajasthan are verified from concerned Hotel, which are found genuine. Further photocopy of Aadhar Card of Mr. Devender Khokha and complainant were also produced by Hotel manager, which were submitted by guest during room booking.
2. Bank account statement of account of Mr. Devcnder Khokha is also verified from concerned Punjab National Bank branch & account statement attached with bail application by petitioner is found correct.
3. During verification of rent agreement statement of one of the first party namely Mr. Naresh Bhatia S/o Late Sh. Arjun Lai Bhatia R/o 14/6, 2nd Floor, West Patel Nagar, New Delhi was got recorded wherein he confirmed that the above mentioned agreement was made by them at the time of giving their property on rent to Mr.Gagan Deep Khokha who resided at their property i.e K-126 Second Floor (Front side) West Patel Nagar, Delhi from 25th June 2020 for 2-3 months along with his wife and kid.
4. Medical treatment paper dated-21.04.2019 of Mrs. Suman Khokha is verified from Ashray Health Care Centre, JA-14/14A, LIG, Near Swarag Aashram, Hari Nagar and only handwritten notes are found genuine.
5. CDR of mobile number of Mr. Devender Khokha and the Complainant are also analyzed. In which calls between both were found.”

13. Learned APP for the State submitted that the complainant made another complaint on 17.04.2021 alleging that on the said date, between 06:30 AM to 07:00 AM, the applicant was stalking her while she was going to the market. She further alleged that he hit her with an iron rod, as a result of which she

sustained injuries. It was also alleged that he threatened her to withdraw her complaint. The MLC of the complainant with regard to the said incident was conducted on 19.04.2021 at Dr. Ram Manohar Lohia Hospital, New Delhi, wherein the nature of injuries sustained by the complainant was opined as 'none'. Subsequently, based on the said allegations, another FIR being FIR No. 73/2021 dated 20.04.2021, under Sections 323/354 of the IPC was registered at PS Rajinder Nagar. Statement of the complainant under Section 164 CrPC, in the said FIR was recorded on 21.04.2021, wherein she repeated the allegations made in the FIR.

14. By way of a status report dated 28.09.2021, authored by SHO PS Rajinder Nagar, it has come on record that during investigation of FIR No. 73/2021, a site plan of the place of occurrence was prepared at the instance of the complainant and CCTV footage of the surrounding area was also checked. As per the available footage, neither the complainant, nor the applicant was seen passing from the said place on the stated date and time of incident.

15. Heard learned counsel for the parties.

16. It is pertinent to note that the applicant was granted interim protection *vide* order dated 05.11.2020 passed by a coordinate bench of this Court. Subsequently, the applicant joined the investigation of the present case and the chargesheet, now stands filed. The charges in the present case have been framed and the trial in the present case is underway. Six prosecution witnesses have been examined.

17. A perusal of the chargesheet filed in the present case reflects that the applicant was interrogated. In furtherance of the allegation that the applicant had clicked objectionable photographs of the complainant, the mobile phone of the latter was seized and deposited with FSL for further examination. The

result of the said FSL examination pertaining to the applicant's mobile phone is awaited.

18. During the course of the present proceedings, learned counsel appearing on behalf of the complainant had expressed apprehensions with regard to the safety of the latter. In view thereof, a coordinate bench this Court, *vide* order dated 14.09.2022 had directed that the complainant may approach the concerned Witness Protection Committee at Tis Hazari Courts with a request for necessary action and on being approached, the committee shall consider the said request within a period of four weeks.

19. The investigation in the present case is complete, chargesheet stands filed and trial is underway. No useful purpose will be served by sending the applicant to judicial custody. The applicant has already been interrogated and any further custodial interrogation is not stated to be required either.

20. In view of the facts and circumstances of the present case, the application for anticipatory bail is allowed.

21. In the event of his arrest in connection with the present FIR, the applicant is directed to be released *forthwith*, upon his furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand) alongwith two sureties of the like amount to the satisfaction of the learned Trial Court, further subject to the following terms and conditions:

- i. The memo of parties shows that the applicant is residing at 51/20, Ground Floor, Old Rajinder Nagar, New Delhi - 110060. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.

- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
 - v. The applicant shall join the investigation, as and when required by the Investigating Officer.
 - vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
- 22.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
- 23.** The application stands disposed of along with all the pending application(s), if any.

**AMIT SHARMA
JUDGE**

03rd February, 2023/ab