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

+ BAIL APPLN. 1698/2024, CRL.M.A. 14690/2024 &
CRL.M.A. 14691/2024

MOHD FAIZAN

..... Applicant

Through: Mr. Mohit Mathur, Sr.
Advocate alongwith Mr.
Hirein Sharma, Mr. Sahaj
Garg, Mr. Harsh Gautam,
Mr. Mayank Sharma, Mr.
Sumit Mishra, Mr. Aniket
Gupta & Mr. Saurabh
Goel, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State alongwith Mr.
Ritesh Bhardwaj, Ms.
Soumya Dhankani & Ms.
Preeti Mukheria, Advocates
& SI Renu (P.S. CWC,
SPUWAC).
Mr. Vikas Arora, Ms.
Radhika Arora & Mr.
Sachin Arora, Advocates for
Complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

22.05.2024

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1. The present application is filed under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), in FIR No.94/2024 dated 20.03.2024 registered at police station Shaheen Bagh for offences under Sections 376/498A/506/34 of Indian Penal Code, 1860.

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2. The FIR was registered on a complaint made by the wife of the applicant alleging that she was raped and was subjected to cruelty, by the applicant and his family members.

3. The marriage between the prosecutrix and the applicant was solemnized on 12.06.2020. They were blessed with two children.

4. It is alleged that in the last week of January, when the prosecutrix was alone at her house, her father-in-law entered her bedroom naked and with the use of force committed rape on her. It is alleged that thereafter father-in-law physically assaulted the prosecutrix and threatened her not to tell anyone about the incident. It is alleged that when the prosecutrix informed her mother-in-law, sister-in-law, and her husband (applicant herein) about the alleged incident, they abused her and threatened her not to disclose the incident to anyone.

5. It is alleged that the applicant and his family members told her that such behaviour was normal in their house and the applicant put a gun against her head and threatened to kill her if she disclosed about the incident to anyone. It is alleged that the mother-in-law and sister-in-law of the prosecutrix used to keep her away from her children, and did not allow her to meet her children. It is alleged that her father-in-law committed rape upon her on several occasions. It is alleged that her brother-in-law has also raped her on 02.03.2024. It is alleged that the prosecutrix was subjected to beatings by all the accused persons and the present applicant used to keep her phone with him and did not allow her to video call her parents.

6. It is alleged that on the intervening night of 03/04.03.2024, when the prosecutrix could no longer bear the physical and mental assault inflicted by the accused persons, as



she was unwell, the applicant's uncle informed the father of the of the prosecutrix. Thereafter the mother and father of the prosecutrix took her to VIMHANS, for getting the treatment from where she was discharged the same day.

7. It is alleged that the prosecutrix condition was not improving and was admitted to VIMHANS Hospital again on 06.03.2024. It is alleged that thereafter the prosecutrix was found fit to give her statement, and she gave statement on 20.03.2024 pursuant to which the present FIR was lodged.

8. The learned senior counsel for applicant submits that the applicant has been falsely implicated in the present case. He submits that the initial period of marriage was cordial, and there was no demand for dowry or any such issues, indicating that the allegations are an afterthought.

9. He submits that the prosecutrix has falsely implicated the applicant in connivance with her parents due to a minor argument that occurred on 03.03.2024. He submits that the complainant's parental home is very close to her matrimonial home, and she used to interact regularly with her parents, and her statement that the applicant didn't used to allow her to speak to her parents is incorrect.

10. He submits that on 03.03.2024, the prosecutrix and the applicant had some altercation, like any ordinary married couple. Thereafter, at around 1:35 AM during the intervening night of 03.03.2024 and 04.03.2024, the mother of the prosecutrix, along with three of her aunts and two of her uncles, came to the applicant's residence. The said members of the prosecutrix family started to create a ruckus outside the house of the applicant.



11. He submits that the father of the prosecutrix refused to let the applicant meet his children. Consequently, the applicant was constrained to file police complaints on 07.03.2024 and 15.03.2024.

12. He submits that the allegations against, the father of the applicant, are vague and concocted as the prosecutrix has not mentioned any time or date in the FIR with respect to the alleged incident being committed. He submits that as per the allegations the alleged incident took place in the month January without specifying the year.

13. He submits that, the prosecutrix and her husband lived on a separate floor and did not reside with other family members.

14. He submits that the allegation that the prosecutrix did not have access to her phone and that it was in the custody of the applicant is also baseless. He relies upon WhatsApp chats, between the prosecutrix and the applicant, husband, to demonstrate that she had unfettered access to her phone. The chats also show that the relationship between the prosecutrix and the applicant was like any ordinary married couple.

15. He submits that the applicant and his family tried their best to resolve the temperamental differences between the prosecutrix and the applicant, but the prosecutrix continued to create disputes.

16. The Additional Public Prosecutor for the State as well as learned counsel for the complainant opposes the grant of bail to the applicant. They submit that the present matter involves serious allegations and the case is at the initial stage of investigation, with several aspects yet to be uncovered and verified.



17. They submit that the husband of the prosecutrix has been previously involved in serious crimes and is known to have a criminal mindset. The father-in-law of the prosecutrix also possesses a licensed firearm and has a previous history of involvement in crime.

18. They submit that the accused persons are at large, absconding, and evading their arrest.

19. They vehemently submit that the accused persons have tortured the prosecutrix to such an extent that she had to be admitted to the hospital to recover from her mental trauma.

20. The learned counsel for the complainant also submits that in the year 2021, there was also a complaint against the in-laws of the prosecutrix regarding physical torture.

21. The learned Additional Public Prosecutor for the State submits that during the course of investigation, the medical examination of the prosecutrix was conducted and statement under Section 164 of the CrPC was also recorded wherein she has reiterated her initial complaint and has supported the case of the prosecution.

22. I have, heard the learned counsel for the parties, and also perused the case diary and the statement given by the prosecutrix under Section 164 of the CrPC.

23. Serious allegations have been made by the prosecutrix. The prosecutrix is only 22 years of age and has alleged that the Father-in-Law had committed rape.

24. She has further alleged that rape was also committed by the Brother-in-Law and when it was informed to the applicant who is her husband, she was threatened not to tell anyone about the incident. It is alleged that the applicant had also put a gun on



her head and threatened to kill her if she disclosed the incident to anyone.

25. The prosecutrix, pursuant to the incidents which, as per the allegations, started sometime towards the end of January and lastly happened on 02.03.2024, is stated to have been hospitalised as a severe case of depression and psychotic symptoms. The case summary also noted that the prosecutrix has a severe depressive disorder, having persistent pervasive sadness of mood with crying spells, decreased appetite, and fearfulness with history of inter personal conflicts with in-laws, causing impact on her health.

26. The discharge summary from the hospital also noted that the prosecutrix, during the course of hospital stay, also disclosed about the physical and sexual violence against her.

27. During the course of hearing, another complaint has been shown to have been made by the neighbour stating that they have been hearing one lady crying loudly. The said complaint was given on 16.03.2021. The complainant in the said complaint, states that the applicant beats his wife badly and has requested the Police to resolve the issue.

28. The learned senior counsel for the applicant had taken the Court through copies, allegedly of the WhatsApp chats between the applicant and the prosecutrix during the period, January, 2024 to March, 2024. It is contended that if the prosecutrix had been suffering from the trauma and had been subjected to cruelty as alleged, she would not have exchanged such messages during that period. He submits that in some of the messages, the prosecutrix has been asking the applicant to bring vegetables for her and some of the messages clearly show that there had been no acrimony between the applicant and the prosecutrix.



29. It cannot be lost sight of the fact that the prosecutrix is only 22 years of age. No reason has been pointed out as to why the girl who has been married and has two children with the accused would try to falsely implicate her husband and his family. The argument that the prosecutrix had implicated the applicant and his family members for some dispute runs contrary to the argument that the WhatsApp chat exchanged between the prosecutrix and the applicant shows the relationship to be normal.

30. It is contended by the learned counsel for the prosecutrix that selective chats have been produced in order to prejudice the Court.

31. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

32. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104***, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”



9. Similar observations have been made by us in a recent judgment in *State v. Anil Sharma* [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

33. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*State v. Anil Sharma* : (1997) 7 SCC 187]. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.



34. It is not in doubt that the statement of the prosecutrix is sufficient for establishing the offence of rape. The statement made by the prosecutrix does not require corroboration, if the same inspires confidence.

35. Considering the status report filed by the State, it cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicant. The nature and the gravity of the allegations are serious. Specific allegations have also been made that the applicant was also the one who physically and mentally assaulted the prosecutrix along with his family members and caused serious injuries. Other accused persons involved in the alleged incident are yet to be arrested. It is important to note that leniency cannot be sought merely because the parties are married. Being married does not grant anyone the right to inflict grievous injuries on his wife, and also to threaten her after being sexually exploited at her own matrimonial house by her own in laws. Such actions are unacceptable and cannot be excused on the basis of proximity or acquaintance.

36. Allegations and defence though would be tested during the trial, it cannot be denied that the investigation is at a nascent stage and other accused persons are yet to be arrested. Right of the State to further investigate and seek custodial interrogation ought not to be denied in the facts of the present case. The applicant has to be interrogated in custody and there are no grounds available to him on the basis which he can be enlarged on pre-arrest bail.

37. Considering the above, and the nature of the offence, no ground for grant of pre-arrest bail to the applicants is made out.

38. The present applications are accordingly dismissed.



39. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

MAY 22, 2024
'Aman' / "SS"