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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3735/2023

MARGUB BEG

..... Applicant

Through: Mohd. Shamikh, Adv.

versus

STATE(GOVT OF NCT DELHI)

..... Respondent

Through: Mr. Utkarsh, APP for the
State along with Ms.
Disha Malhotra, Adv.

WASI Vineeta, PS
Jafrabad & SI Shalini, PS
Jafrabad.

Adv. Vishal Maurya &
Adv. Ritu along with
victim.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

05.04.2024

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No.351/2023 dated 28.07.2023, registered at Police Station Jafrabad, for offences under Sections 354/376 of the Indian Penal Code, 1860 and Sections 4/8 of the Protection of Children from Sexual Offences Act, 2012.

2. On 27.07.2023, a PCR call was received from the mother of the victim wherein it was informed that the victim had told her that the applicant and his son had done wrong with her.

3. The present FIR was lodged subsequently on the basis of the statement of the victim. It is alleged that the applicant (a friend of the victim's father) had stayed at the house of the victim for a night in December, 2021. It is alleged that when the victim

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had gone to the terrace to cut fire wood when the applicant caught hold of her from behind and pressed her chest. It is alleged that the applicant threatened to get her father and brother killed. It is also alleged that the applicant then put his fingers on the 'urine spot' of the victim. It is alleged that the applicant continued to frequent the house of the victim. The victim did not disclose anything about the incident out of fear.

4. It is alleged that in January, 2022, the applicant's son came to the house of the victim before he went to Bahrain. It is alleged that when the applicant went on the terrace to give tea to the applicant's son, he kissed her cheek and forcefully put his genitals in her mouth. It is alleged that the applicant's son also threatened her that if she told anyone about the same, he would defame her.

5. It is alleged that on 10.05.2023, the victim's brother went to Bahrain to work with the applicant's son. It is alleged that the applicant's son continued to threaten the victim that he will kill her brother and forced her to send him her nude photos.

6. The statement of the victim under Section 164 of the CrPC was recorded on 28.07.2023 before the learned Chief Metropolitan Magistrate, Karkardooma Courts, Delhi. The victim alleged therein that the applicant also forcefully had sex with her on the terrace during the incident in December, 2021.

7. The learned counsel for the applicant submits that the applicant has clean antecedents and has been falsely implicated in the present case.

8. He submits that the marriage of the applicant's son was fixed with the prosecutrix and broken later, whereafter, the present FIR was lodged by the prosecutrix out of vengeance.

9. He submits that the victim's brother had gone to search for



a job in Bahrain and the expenses for the same were borne by the applicant's son, however, the victim's brother failed to manage the job and returned to Delhi. He submits that the victim's brother had committed theft in Bahrain due to which the applicant's son had lodged a complaint against him there. He submits that the present FIR was lodged as a counterblast.

10. He submits that the victim has clearly improved her statement under Section 164 of the CrPC substantially. In the FIR, it is not alleged by the victim that the applicant forcefully had sex with her.

11. He submits that there is no evidence against the applicant in the present case apart from the statement of the prosecutrix.

12. He submits that the alleged incident of rape and molestation by the applicant happened in December, 2021, despite which the present FIR was lodged on 27.07.2023 after an unexplained delay of over one and a half years.

13. He submits that at the time of the alleged incident, the victim was in his home town in Western Uttar Pradesh.

14. He further submits that custodial interrogation of the applicant is not required in the present case. He further states that interim protection was granted to this Court by the learned Trial Court and by this Court and the liberty was never misused by the applicant.

15. The learned Additional Public Prosecutor ('APP') for the State submits that the allegations in the present case are heinous in nature.

16. He submits that the offence under Section 376 (3) of the IPC is alleged in the present case whereby the present application under Section 438 of the CrPC is not maintainable in terms of Section 438(4) of the CrPC.

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17. He submits that the investigation is at a nascent stage and the chargesheet is yet to be filed in the present case.

18. He submits that the proceedings under Sections 82/83 of the CrPC have been initiated against the applicant post the filing of the present application.

19. I have heard the learned counsel for the parties.

20. While determining the parameters in granting pre-arrest bail, the Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694** held as under:

“112.

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some



doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

21. The applicant has sought the grant of pre-arrest bail on the ground that the FIR in the present case is the result of calling-off of the marriage between the applicant's son and the prosecutrix. It is argued that the applicant was not in Delhi at the time of the incident. Allegations of rape have also been levelled by the prosecutrix against the applicant's son.

22. A bare perusal of the material on record indicates that the allegations *qua* the offence of rape were not made in the FIR and levelled later against the applicant by the prosecutrix in her statement under Section 164 of the CrPC. It is also pointed out that apparently the applicant's son instituted a case against the prosecutrix's brother in Bahrain for theft. While the veracity of the allegations and defences would be tested during trial, this Court cannot lose sight of the fact that the FIR was lodged after one and a half years of the alleged incident, the prosecutrix had not made any allegations of rape against the applicant in the FIR and there appears to be some prior discord between the parties.

23. It is not denied that the CAF and CDR of the applicant indicate that he was not in Delhi at the time of the alleged offence. Even though during the course of the arguments, the learned counsel for the complainant had submitted that the applicant was operating another phone and was in Delhi at the time of the incident, no evidence has been placed on record to substantiate the said averment at this stage.

24. The Hon'ble Kerala High Court in the case of **XXXXXXXXXXXXXXXXXXXX XXXXXX v. State of Kerala & Ors. : 2023:KER:55877** had held that the bar under Section 438(4) of the CrPC is not an absolute bar and would be attracted only in a
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case where the information received by the police is credible and there are reasons to believe that the accused person is guilty of the alleged offence. It was observed that where there is no *prima facie* material on record to warrant the arrest of the accused person and it was discernible that the allegations were *prima facie* false or motivated, the bar of Section 438(4) of the CrPC would not be attracted and the Court could grant a pre-arrest bail to the accused.

25. The present FIR was registered almost one and a half years after the alleged incident. While the victim has alleged that the applicant had threatened her, the delay in giving the complaint, at this stage, casts doubt on the veracity of the prosecution's case.

26. The Hon'ble Apex Court, in the case of **Meharaj Singh (L/Nk.) v. State of U.P. : (1994) 5 SCC 188**, held as under:

"12. ...Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story..."

27. The applicant was granted interim protection by this Court by order dated 05.01.2024. This Court had observed that *prima facie* the allegations as made in the complaint by the prosecutrix did not constitute an offence under Section 376 of the IPC. The submission of the learned counsel for the complainant was also noted that the applicant was allegedly threatening the witnesses. However, no complaint in this regard was ever submitted.

28. It is not the prosecution's case that the applicant has since misused the liberty of interim protection or that the applicant has not cooperated with the investigation thereon.

29. It is not in doubt that an order for bail cannot be passed in a routine manner so as to allow the accused to use the same as a



shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with arrest. The purpose of custodial interrogation is to aid the investigation and is not punitive.

30. In the present case, this Court is not of the opinion that custodial interrogation of the applicant is specifically needed. Any apprehension regarding the applicant tampering with the evidence or threatening the witnesses can be taken care of by imposing appropriate conditions.

31. In view of the above, it is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall not visit the locality where the victim resides;
- b. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- c. The applicant shall join and cooperate with the investigation as and when directed by the IO;
- d. The applicant will not leave the boundaries of Delhi without informing the IO/ SHO concerned;
- e. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- f. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;



- g. The applicant shall give the details of his residence to the concerned IO/SHO, and inform them in case of any change.
32. The present application is accordingly allowed.
33. 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

APRIL 5, 2024/ "SK"