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

106

+ BAIL APPLN. 3807/2023

NARESH

..... Petitioner

Through: Mr. Ajeet Shukla and Ms. S.Shukla,
Advocates.

versus

THE STATE (GOVT. OF N.C.T. OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State
with SI Vikas Bhardwaj, PS: M.S. Park.

108

+ BAIL APPLN. 3814/2023

RAJNI

..... Petitioner

Through: Mr. Ajeet Shukla and Ms. S. Shukla,
Advocates.

versus

THE STATE (GOVT. OF N.C.T. OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State
with SI Vikas Bhardwaj, PS: M.S. Park.

109

+ BAIL APPLN. 3827/2023

SHIVANI

..... Petitioner

Through: Mr. Ajeet Shukla and Ms. S.Shukla,
Advocates.

versus

THE STATE (STATE OF NCT OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State
with SI Vikas Bhardwaj, PS: M.S. Park.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

22.05.2024

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1. These bail applications have been preferred on behalf of the applicants under Section 438 Cr.P.C. read with Section 482 Cr.P.C. seeking anticipatory bail in case FIR No. 205/2023 dated 05.07.2023 under Sections 312/315/317/120B IPC registered at PS: Mansarovar Park.
2. Case of the prosecution is that the present FIR was registered on a complaint from Rahul, in which he stated that he got married to Deepmala in 2022. She conceived thereafter and as per the ultrasound report dated 03.04.2023 from Noida International Institute of Medical Sciences, Deepamala was 8 weeks and 4 days pregnant. On 09.06.2023, Deepmala went to her father's house and on 17.06.2023 during a telephonic conversation, she disclosed that she had aborted the child and disposed the foetus with the help of her family members and also sent a photo of the foetus. It was alleged that Deepmala, her sister Shivani and her parents hatched a conspiracy and killed the unborn child. Based on this, investigations were initiated by the Police.
3. Applicants approached the Trial Court seeking anticipatory bail along with Deepmala. The applications were dismissed vide order dated 25.10.2023 and thereafter, the applicants filed the present bail applications. On 10.11.2023, Court granted interim protection to the applicants against coercive action, subject to their joining investigation as and when directed by the IO and co-operating therein. Interim order has continued till date.
4. Status report and updated status report have been filed on behalf of the State.
5. Learned counsel for the applicants submits that applicants are innocent and have been falsely implicated. Deepmala had a love marriage with the complainant against the wishes of her family and the complainant



was only seeking to take a revenge by filing a false and frivolous FIR. Deepmala was harassed and humiliated by her in-laws but instead of protecting her, complainant who is her husband started drinking everyday and when drunk he would abuse and beat her and would not allow her to meet her family members. In April, 2023, Deepmala conceived and it was the complainant who pressurised her to terminate the pregnancy. Finally, Deepmala took a separate room on rent and the complainant would visit her once in a fortnight. On 07.06.2023, the complainant and his family members abused Deepmala and physically kicked her in the stomach and forced her against the wall, coercing her to consume some medicine in the middle of the night. They repeatedly made complaints that she was not fulfilling their dowry demands. With great difficulty, Deepmala saved herself and came to her parental house but her health had deteriorated considerably. The physical and mental trauma resulted in the abortion and it is incorrect to allege that Deepmala or the applicants deliberately aborted the child.

6. It is contended that applicants have joined investigation and have been co-operating and undertake that they will continue to do so, as and when called by the Investigating Officer. Applicants have clean antecedents and have not misused the interim protection granted by this Court on 10.11.2023. It is not the case of the prosecution that applicants have made any attempt to tamper with evidence or influence witnesses.

7. Learned APP for the State, relying on the status reports, fairly submits that applicants have joined investigation and are co-operating. Investigation is at an advance stage. At the suspected spot, excavation was carried out on 02.05.2024 in the presence of the Executive Magistrate concerned to find



out the remains of the foetus but nothing was found. The whole process was photographed and videographed by a private photographer. Medical examination of Deepmala was conducted on 13.05.2024 to obtain an opinion as to whether she could deliver a 4 to 5 months old foetus at home without medication and response has been received. On 17.05.2024, voice samples of the complainant and accused Deepmala were recorded in FSL, Rohini in the presence of two independent witnesses. The samples will now be matched with the voices in the call recordings provided by the complainant. It is submitted that the applicants are not required for custodial interrogation.

8. Heard counsel for the applicants and learned APP for the State.

9. Complainant in the present case is the husband of accused Deepmala, who has also filed an anticipatory bail application which is being considered separately. Accused Naresh is the father of Deepmala while accused Rajni is the mother and accused Shivani is the sister. Under the interim protection granted by this Court on 10.11.2023, applicants have joined investigation and learned APP has fairly stated that they are co-operating. Applicants undertake to join investigation and co-operate therein, if and when directed by the IO in the future. It is not the case of the State that the applicants are a flight risk or have tampered with evidence and/or intimidated or threatened the witnesses under the umbrella of the interim protection granted so far. It is also uncontroverted that the applicants have clean antecedents and have not been involved in any criminal activity, save and except, the present FIR registered against them. Deepmala is being interrogated. Voice samples of the complainant and Deepmala have been taken in FSL, Rohini and will be matched with the voices in the call recordings provided by the complainant. Opinion of the Doctor on the possibility of delivering a 4 to 5 months old



foetus without medication has been obtained. Excavation work at the suspected spot to recover the remains of the foetus, if any, has been conducted under the aegis of the Executive Magistrate but nothing was found.

10. In the context of factors that must be taken into consideration while considering a pre-arrest bail, it would be useful to allude to the judgment of the Supreme Court in ***Sushila Aggarwal and Others v. State (NCT of Delhi) and Another, (2020) 5 SCC 1***, relevant paragraphs of which are as follows:

“92.3. Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”



11. Recently, the Supreme Court in ***Ashok Kumar v. State of Union Territory Chandigarh, 2024 SCC OnLine SC 274***, observed as follows:-

“6. By our Order dated 25.08.2023, notice was issued and an interim order was passed that the appellant shall not be arrested.

7. We are informed that after our Order dated 25.08.2023, referred to above the appellant appeared before the Investigating Officer for the purpose of interrogation and his statements have been recorded. We are also informed that the specimen signatures/ hand-writings of the appellant has also been collected and sent to the Forensic Science Laboratory.

8. The learned counsel appearing for the appellant submitted that in such circumstances, the appellant may be ordered to be released on anticipatory bail. On the other hand, Mr. Kanu Agarwal, the learned counsel appearing for the respondent-Union Territory of Chandigarh has vehemently opposed the plea for anticipatory bail. He submitted that the appellant is the main accused and his custodial interrogation is required.

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should exercise our discretion in favour of the appellant and order his release on anticipatory bail in the event of his arrest by the police?

10. The First Information Report originates from a departmental inquiry initiated sometime in 2017. It took almost 6 years for the police to register the FIR for the alleged offences. We do not say for a moment that this by itself is sufficient to order the release of the appellant on anticipatory bail.

11. One good ground which has persuaded us to exercise our discretion in favour of the appellant is that the appellant has already joined the investigation. He has cooperated in the investigation so far.

12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.

13. The appellant has assured this Court that as and when required to appear in future before the Investigating Officer, he would do so and cooperate in the investigation.



14. Without observing anything further, we set aside the impugned order passed by the High Court. We order that in the event of arrest of the appellant by the police in connection with the F.I.R. referred above, he shall be released on bail subject to terms and conditions that the Investigating Officer may deem fit to impose.”

12. The role of the applicants in the alleged offences will be a matter of trial. In view of the aforesaid circumstances, in my view, the applicants fulfil the tripod test for grant of anticipatory bail, particularly, as they have not misused the interim protection granted by the Court and have co-operated in the investigation. Accordingly, interim order dated 10.11.2023 is hereby made absolute *qua* the applicants herein, directing that in the event of arrest, applicants shall be released on bail on their furnishing personal bonds in the sum of Rs.20,000/- each with one surety each of the like amount to the satisfaction of the Trial Court and further subject to the following conditions: -

- i. Applicants shall not leave the country without prior permission of the Trial Court;
- ii. They shall furnish their mobile numbers to the IO and keep the same active at all times and shall not change the mobile numbers without prior intimation to the IO and the Trial Court;
- iii. They shall appear before the Trial Court on the dates of hearing and/or for any further investigation, as and when directed by the IO;
- iv. They shall not, directly or indirectly, indulge in any illegal activity or make any inducement, threat or promise to any person associated with the case including the complainant; and



- v. They shall furnish their current residential addresses to the IO and intimate any change in the same to the IO and the Trial Court by way of affidavit(s).
13. Bail applications stand disposed of in the aforesaid terms, making it clear that this Court has not expressed any opinion on the merits of the case.

MAY 22, 2024/shivam

JYOTI SINGH, J