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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 4094/2024, CRL.M.A. 33740/2024, CRL.M.A. 33741/2024 & CRL.M.A. 33742/2024.

SAHIL

.....Petitioner

Through: Ms. Pragya Parijat Singh, Mr. Gagan Puri, Mr. Sanskar Aggarwal, Mr. Lakshay Sain and Mr. Ajay Kumar Namsaut, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for the State alongwith SI Nisha Sharma, PS-Govindpuri.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
12.11.2024

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1. The instant application under Section 482 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”) [earlier under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973] has been filed on behalf of the applicant/petitioner seeking grant of anticipatory bail in the case arising out of FIR bearing no. 231/2024 registered at the Police Station – Govind Puri, Delhi for offences punishable under Sections 376D/506/328 of the Indian Penal Code, 1860 (hereinafter as the “IPC”).

2. As per the prosecution case, on 27th July, 2023, a complaint was received at Police Station – Govind Puri, Delhi alongwith certain documents wherein the complainant/prosecutrix had stated that she used to work as a



maid and cook food for the household of one Ms. Sandhya, a resident of House No.1280/8, Govind Puri, Delhi.

3. The prosecutrix alleged that on 29th December, 2022, she was called by Ms. Sandhya to her house to cook food for a birthday party. At around 8:00 PM, 4-5 persons came to the party, which includes the applicant herein i.e., Mr. Sahil, who misbehaved with her. After winding up her job, she was offered a drink by Ms. Sandhya which was laced with intoxicants and after consuming the same, the prosecutrix became unconscious and on 30th December, 2022, at around 4:00 PM, she found herself admitted in Medanta Hospital with multiple injuries over her body.

4. The prosecutrix alleged that she experienced pain in her private parts and contended that she somehow managed to escape from Medanta Hospital and got herself admitted at AIIMS Hospital, Delhi. The prosecutrix also alleged that she was gang-raped by 3-4 persons and identified the applicant herein i.e., Mr. Sahil to be one of them.

5. Accordingly, a complaint dated 27th July, 2023 was received by the Police Station – Govind Puri, Delhi which led to the filing of the aforesaid FIR.

6. Thereafter, the applicant filed an application for anticipatory bail before the learned ASJ-02, South-East District, Saket Courts, Delhi (hereinafter as the “ASJ”) which was dismissed vide order dated 17th September, 2024 considering the gravity of the offences, investigation being at a nascent stage and absconding of the co-accused.

7. Aggrieved by the same, the applicant has filed the instant application seeking anticipatory bail.

8. Learned counsel appearing on behalf of the applicant submitted that



the applicant is an innocent person and has not committed any offence as alleged in the complaint or the FIR. It is submitted that the aforesaid FIR dated 15th April, 2024 was registered by the police after a huge delay of 1 year 3 months 15 days from the date of occurrence of the alleged incident i.e., 29th December, 2022, moreover, the complaint was lodged by the prosecutrix only after a period of six months of the alleged incident and the second complaint was lodged only after 15 days of the first complaint i.e., 27th July, 2023.

9. It is submitted that there are several loopholes in the prosecutrix's version, thereby, contradicting the actual sequence of events which took place on the date of incident.

10. It is submitted that the applicant is co-operating with the police and accordingly, joined the investigation thrice before the investigating agency. Therefore, no custodial interrogation of the applicant is required in the present case.

11. It is further submitted that the injuries sustained by the prosecutrix are due to the car accident and therefore, the allegations against the present applicant for cause of any injury on the body of the complainant is false and fabricated.

12. Moreover, it is submitted that there is no history of previous involvement of the applicant in any criminal case and he has clean antecedents. Further, learned counsel for the applicant submitted that the applicant undertakes to abide by any condition which may be imposed by this Court while granting anticipatory bail.

13. In view of the foregoing submissions, it is prayed that he may be granted anticipatory bail.



14. *Per Contra*, learned APP appearing on behalf of the State vehemently opposed the instant application and submitted that the applicant is charged with heinous offence of raping the prosecutrix along with 3-4 persons. Moreover, the prosecutrix has identified the name of the applicant herein in her complaint.

15. It is submitted that the prosecutrix has narrated the same version as mentioned in the aforesaid FIR in her statement under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”), wherein the applicant’s name was specifically mentioned by the prosecutrix. During the arguments, Mr. Raghuinder Verma, learned APP for the State has furnished the case diary as well as the statement of the prosecutrix recorded under Section 164 of the Code for perusal of the Court.

16. It is submitted that the applicant is charged with heinous offences and therefore, this Court may not be given any concession for granting the applicant on anticipatory bail as he is the main accused in the instant case and was named by the prosecutrix in her complaint as well.

17. It is further submitted that one of the co-accused in the aforesaid FIR is absconding and proceedings under Section 82 of the Code have been initiated against him. The applicant, being the main accused in the instant case, is required for custodial interrogation of the case for completion of the investigation. Therefore, in view of the foregoing submissions, it is prayed that the instant application may be dismissed.

18. Heard learned counsel for the parties and perused the record.

19. Upon perusal of the contents of the instant application, complaint, FIR as well as the statement made under Section 164 of the Code, it is observed that the prosecutrix is unaware as to how she got unconscious on



the date of the incident i.e., 29th December, 2022. Further, it is unexplained as to how she found herself admitted in the Medanta Hospital and sustained injuries on her private parts.

20. However, she has specifically mentioned the name of the applicant in her complaint as well as the statement recorded under Section 164 of the Code, thereby, making him a crucial for further investigation of the instant case. It is also an admitted fact that the applicant and the co-accused were present at the birthday party which took place at the house of one Ms. Sandhya where the prosecutrix was working as a maid, especially on the date of the incident.

21. Furthermore, it has been vehemently submitted by the learned APP that one of the co-accused mentioned in the aforesaid FIR is currently absconding and proceedings under Section 82 of the Code have already been initiated against him.

22. It is a trite law that while granting anticipatory bail to the accused, the ramifications of such liberty should not compromise the veracity of the investigation. The said principle is encapsulated by the Hon'ble Supreme Court in the case of ***State of A.P. v. Bimal Krishna Kundu*, (1997) 8 SCC 104**, wherein, it 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.”

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.”

23. Given the aforementioned case-law, this Court is of the view that if the applicant is granted liberty under Section 482 of the BNSS i.e., Section 438 of the Code, the veracity of the investigation may highly get affected due to his non-cooperation in the investigation, especially in the absence of the co-accused, who are currently absconding. Therefore, keeping the



aforesaid facts in mind, the instant case requires credible information for completion of investigation in the said case as there exists loopholes and certain unanswered questions in the instant case and the same would remain unanswered and undetermined if the applicant is granted protection under Section 482 of the BNSS i.e., Section 438 of the Code. Therefore, considering the above, gravity of offence and nascent stage of the investigation, this Court is of the view that no ground for grant of anticipatory bail is made out.

24. Accordingly, the instant application along with any pending applications, stands dismissed.

25. It is made clear that the observations made herein, touching upon the merits of the case, are purely for the purpose of deciding the question of granting anticipatory bail to the applicant, which shall not be construed as an expression of observations on the merits of the case.

26. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 12, 2024

Rk/mk

[Click here to check corrigendum, if any](#)