



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3809/2023**
DEEPMALAPetitioner

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

versus

THE STATE (GOVT. OF N.C.T. OF DELHI)Respondent
Through: Mr. Mukesh Kumar, APP.
Mr. SI. Vivek Nandan, P.S.
Mansarovar Park.
Mr. Kanhaiya Singhal (Amicus
Curiae) with Mr. Abhishek Prakash
and Mr. Binwant Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
30.01.2025

%

1. The present application filed under Section 438 of the Code of Criminal Procedure, 1973¹ seeks anticipatory bail in proceedings arising from FIR No. 205/2023 registered under Section 312/315/317/120B of the Indian Penal Code, 1860² at P.S. Mansarovar Park.

2. In brief, the case of the prosecution is as follows:

2.1. The present FIR was registered on a complaint made by Mr. Rahul, who married Ms. Deepmala (the Applicant) in 2022. After the marriage, the Applicant conceived and as per the ultrasound report dated 3rd April, 2023

¹ "Cr.P.C."

² "IPC"



conducted at Noida International Institute of Medical Sciences, the gestation period was 8 weeks and 4 days pregnant.

2.2. The Complainant asserted that on 09th June, 2023, the Applicant went to her father's house and on 17th June, 2023 during a telephonic conversation, she disclosed that she had aborted the unborn child and disposed the foetus with the help of her family members and also sent a photo of the foetus. It was alleged that the Applicant along with her sister Ms. Shivani and her parents hatched a conspiracy and killed the unborn child.

2.3. During the course of investigation, notice under Section 91 of Cr.P.C was given to Jyoti Nursing Homes for CCTV footage and copy of the record of patients maintained at the hospital, however the CCTV footage was not provided but as per the list of patients dated 14th/15th June, 2023, the Applicant's name was not mentioned.

2.4. Further, the Applicant disclosed that on 7th June, 2023 when she went to her father's house, her health deteriorated and for this purpose, she went to the General Hospital and then GTB Hospital. However, MLC was not prepared at any hospital. With no option left, she aborted the baby at home in the presence of her mother and sister. Her sister clicked the photo and video of the foetus and thereafter, her parents disposed of the body of the foetus in the Yamuna river.

2.5. The CDR of all accused persons were obtained which reveal that the Applicant was in conversation with the Complainant from 9th June, 2023 to 17th June, 2023.

2.6. Additionally, efforts were made to recover the body of the foetus but the identified area was not specific and therefore, no recovery was made.



2.7. The Applicant, along with her family members, approached the Trial Court seeking anticipatory bail, however, the said request was dismissed through order dated 25th October, 2023. On 10th November, 2023, this Court granted interim protection to the Applicant against coercive action, subject to their joining investigation as and when directed by the IO and co-operating therein.

3. In this background, Counsel for the Applicant advances the following in support of the Applicant's request for anticipatory bail:

3.1. The Applicant has been falsely implicated as the present FIR has been registered after a delay of 22 days with the intent to harass the Applicant and her family.

3.2. The Applicant had a love marriage with the Complainant against the wishes of her family and the Complainant was only seeking to take revenge by filing a false and frivolous FIR. The Applicant was harassed and humiliated by the Complainant and his family members. The Complainant, being intoxicated, would abuse and beat the Applicant and would not allow her to meet her family members.

3.3. When the Applicant conceived in April, 2023, the Complainant pressurised her to terminate the pregnancy. The Applicant started living in a rented accommodation and the Complainant would visit her once in a fortnight. On 07th June, 2023, the Complainant and his family members abused the Applicant and physically kicked her in the stomach and forced her against the wall, coercing her to consume some medicine. They repeatedly made complaints that she was not fulfilling their dowry demands. The Applicant saved herself and came to her parental house but her health had deteriorated considerably. Due to the physical and mental trauma caused



by the Applicant's in-laws, it resulted in the abortion of the child.

3.4. Consequently, the Applicant filed a complaint through DD No. 59A dated 26th June, 2023 at P.S. Mansarovar Park, but no action was taken.

3.5. The Applicant has joined investigation and have been co-operating and undertakes that she will continue to do so, as and when called by the Investigating Officer. Applicant has clean antecedents and has not misused the interim protection granted by this Court on 10th November, 2023.

4. On the other hand, Mr. Mukesh Kumar, APP for the State, vehemently opposes the request for anticipatory bail. He states that at the suspected spot, excavation was carried out on 02nd May, 2024 in the presence of the Executive Magistrate, Civil Lines, to find the remains of the foetus but nothing was found. The whole process was photographed and videographed by a private photographer. Thereafter, on 13th May, 2024, medical examination of the Applicant was conducted 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 17th May, 2024, voice samples of the Complainant and the Applicant were recorded in FSL, Rohini in the presence of two independent witnesses. The said samples have been deposited with FSL Rohini to match them with the call recordings provided by the Complainant.

5. The Court has considered the facts and the submissions advanced. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused



person at the trial.³

6. In the present case, the Complainant in the present case is the husband of the Applicant. Applicant's father, mother and sister have been granted anticipatory bail by this Court by order dated 22nd May, 2024. Notably, the Applicant has not misused the interim protection granted to the Applicant and has co-operated in the investigation. Moreover, it is not the case of the prosecution that Applicant has made any attempt to tamper with evidence or influence witnesses. Further, the question of whether the abortion resulted on account of physical or mental trauma or was a part of conspiracy as alleged by the Complainant, is a matter to be determined in the proceedings before the Trial Court. The opinion on the legal question that whether the abortion can be carried out at home without any medication, as per the MLC annexed with the status report, is inconclusive.

7. In view of the foregoing, the application is, therefore, allowed. The Applicant, in the event of arrest, is directed to be released on bail on furnishing a bail bond for a sum of INR 50,000/- with one surety of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The Applicant shall join and cooperate with the investigation as and when directed by the IO;
- b. The Applicant shall not leave the boundaries of Delhi NCR without informing the IO/ SHO concerned;
- c. The Applicant shall not contact the witnesses or tamper with the evidence in any manner;

³ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



- d. The Applicant shall give her mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
8. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
9. 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.
10. The application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

JANUARY 30, 2025

as