

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1162/2021

Date of Decision : 23.04.2021

AMEET KHANDELWAL

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Setu Niket, Ms. Esha
Mazumdar, Ms. Avani Kaushal &
Ms. Salonee Keshwani, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, APP for the State
with SI Anil Kumar, PS. Greater
Kailash-1.
Ms. Tanessa Puri, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (Oral)

1. The present bail application has been filed under Section 438 Cr.P.C. on behalf of the petitioner for grant of anticipatory bail in case FIR No. 005/2021 under Sections 376/506/509 IPC registered at Police Station Greater Kailash as the Court of Sessions dismissed his anticipatory bail application on 01.04.2021, holding that the allegations

against the petitioner are serious and it is not a fit case for grant of anticipatory bail.

2. Briefly stated, the facts of the case are that on 29.12.2020 a complaint was lodged by the victim at P.S. Greater Kailash against the petitioner who is her step father. In the said complaint, the complainant stated that she was pursuing Economics from D.U. and was staying with her mother after the separation of her mother from her father in the year 2001. It is stated that her mother is a business woman and in the year 2010 her mother met the petitioner who was also divorcee, and they married each other in the year 2012. Thereafter the petitioner also started living with them and started working in the complainant's mother company. It is alleged that shortly, after the marriage between the petitioner and mother of the complainant, behaviour of the petitioner from the beginning was over friendly with her and was always finding excuses to physically touch her and hug her.

3. It is further alleged that the complainant objected to the behaviour of the petitioner who told her that he was only trying to teach her and discipline her and she could not take it otherwise. It is further alleged that soon his behaviour progressed in the direction of aggressive sexual harassment and was always trying to touch the body of the complainant when no one was looking. It is alleged that the

complainant was severely, emotionally depressed and then she started to object very loudly telling the petitioner not to touch her on her bum or any other part of her body even as a friendly gesture.

4. It is further alleged that after observing this kind of behaviour for a long time, the complainant started avoiding the petitioner whom she always addressed as daddy. It is further alleged that the behaviour of the petitioner was very vulgar and cheap in front of the complainant and he had no respect for her mother. It is further alleged that the life style of the petitioner is like a street goon and he always dresses inappropriately and used to roam around inside the house and in front of the complainant wearing only shorts and with bare chest. It is further alleged that the complainant always used to suspect that he is trying to mix some medicines in her drink such as tea, coffee, juice as on several occasions, she noticed that the taste of the drinks were strange. It is alleged that once after consuming such drink, the complainant felt dizzy and felt like she was going unconscious so she immediately took a bath with cold water to keep herself awake. It is further alleged that thereafter the complainant avoided having tea, coffee, juice etc. whenever the petitioner was near her or near the kitchen.

5. It is further alleged that she has not shared this with her mother. One day her mother had a cup of green tea made by the petitioner for

the complainant which she did not drink, but her mother consumed this green tea, and she became unconscious and woke up next morning with a severe headache and other symptoms. It is further alleged that after this incident the complainant completely stopped drinking and eating near the petitioner. It is further alleged that every time the petitioner went on international trips, he always wanted to go or come via Bangkok where he would often stay at night to satisfy his lusts. It is alleged that the petitioner used to bring his goon type friends to the house to drink and then they would cheaply speak in the house.

6. It is alleged that on 18.05.2020 around 09-09:30 a.m. when the complainant was taking bath in her bathroom, she forgot to take her towel inside. It is alleged that after she finished bathing, she shouted out loud to the maid to hand her towel. It is alleged that there was a knock on the door which the complainant thought was maid but to her shock it was the petitioner at the door and he pushed opened the door and grabbed her and licked the face of the complainant. It is further alleged that the petitioner inserted his finger inside her private part and refused to leave her. When the complainant struggled and shouted the petitioner pushed her and punched her in her stomach and asked her to keep quiet. It is alleged that thereafter he took out his mobile and told that he was making nude video of the complainant and if she would make noise then he would show this video on the internet. It is alleged that the petitioner also threatened her to kill the complainant and her

mother. It is alleged that thereafter the petitioner left the house and ran away. It is alleged that when she discussed and shared the incident with her mother, she broke down and assured the complainant not to worry and that she would support her and would not keep quiet about this incident, even if the complainant published the nude pictures of the complainant.

7. I have heard Mr. Sudhir Nandrajog, Sr. Adv., counsel for the petitioner as well as Ld. APP for the State. The private counsel representing the complainant had also made her submissions and assisted the Ld. APP.

8. The main contention of the Ld. Sr. Counsel for the petitioner is that the petitioner has been falsely implicated in the instant case. It is submitted that the marriage between the mother of the complainant and the petitioner is their second marriage and they had incorporated a company namely "Prayer Dhoop Agarbatti Pvt. Ltd." of which they are the owners of 50% share holding as well as directors in the company. It is further submitted that Mrs. Pooja Goela was caught cheating by the petitioner as the photographs of Ms. Pooja Goela with another person were revealed to the petitioner and the differences arose due to the infidelity of Mrs. Pooja Goela and for this reason the petitioner left the property where he was living with her family and started living with his friend at Laxmi Nagar from January 2020 till march 2020.

9. It is submitted that the memorandum of settlement on 05.03.2020 was entered into between the petitioner and Mrs. Pooja Goela which noted the differences between the petitioner and Mrs. Pooja Goela and they agreed to live separately for six months and it was also agreed that separate payments with respect to accommodation for the petitioner shall be paid by the company. It is further urged that the petitioner also arranged for an alternate accommodation in the name of the company in East of Kailash and a lease deed dated 06.03.2020 was executed and the possession was handed over to the petitioner. He further submitted that Mrs. Pooja Goela started misappropriating the funds of the company and started new company namely “Prayer Ensemble Pvt. Ltd.” in which she had share holding of 80% and the same was created with the sole purpose to cause monetary loss to the petitioner. It is submitted that since Mrs. Pooja Goela was indiscriminately withdrawing the money from the account of the company, the petitioner preferred letters to the banker of the company i.e. ICICI Bank to freeze the account of the company, so, acting on the complaint of the petitioner ICICI Bank imposed debit freeze on the account of the company.

10. It is further submitted that Mrs. Pooja Goela preferred a company petition and vide order dated 10.11.2020, conditional release was granted for limited purpose. It is further urged by the Ld. Sr. counsel that Mrs. Pooja Goela in collusion with ICICI Bank indiscriminately

withdrew money in gross violation of the orders of NCLT so that the petitioner was compelled to initiate contempt proceedings against Mrs. Pooja Goela and ICICI bank. It is further submitted that the cheques issued to the petitioner by the company were dis-honoured by the bankers of the petitioner as Ms. Pooja Goela had stopped the cheques, so complaints U/s 138 NI Act have been preferred by the petitioner against the company and Mrs. Pooja Goela. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner was regularly threatened implications in false cases about which he made complaints at P.S. Greater Kailash at different point of time. It is further submitted that there is a delay of more than 7 months in filing the present complaint by the complainant and there is no explanation for the delay. It is further submitted that the alleged incident is dated 18.05.2020 but the complainant preferred the complaint on 29.12.2020 which has been filed solely with the purpose that the petitioner may not pursue his business interest in the company.

11. It is further urged that the petitioner was not residing at the residence R-64, 3rd Floor, Greater Kailash-1, where the complainant was present on the date of the incident and the IO made no efforts to obtain the location of the petitioner's mobile phone. It is further submitted that the petitioner had never absconded and has joined investigation on 10.02.2021, 11.02.2021, 12.02.2021, 15.02.2021, 16.02.2021 and 17.02.2021. It is further submitted that the allegations

in the FIR are totally false and no dates, day, time has been mentioned about the incidents. It is further submitted that no custodial interrogation is required and the petitioner has clean past antecedents. It is further submitted by the Ld. Sr. counsel that the contents of the FIR are highly improbable and cannot be believed. It is further submitted that according to the complainant, the petitioner prior to the alleged incident of 18.05.2020 has been misbehaving and sexually harassing the complainant but she had never made any complaint to her mother or brother which shows that she had no complaints.

12. It is further submitted that as per the complainant once the mother of the complainant fell un-conscious after drinking green tea which was meant for the complainant but the mother of the complainant drank the same, still the complainant failed to bring to the notice of her mother the alleged conduct of sexual harassment to the notice of her mother. It is further submitted by the Ld. Sr. counsel that the complainant even had a grown up brother and she never brought even to his notice the alleged misconduct/sexual harassment being done by the petitioner. It is further submitted that the FIR has been filed after 7 months of the alleged incident under a well planned strategy to extort money from the petitioner and to take revenge from the petitioner for the cases filed by him for redressal of bonafide grievances as the owner of the company. It is further submitted by the Ld. Sr. counsel that the mother of the complainant was pursuing all

sorts of litigations against the petitioner prior to the date of complaint which is 29-12-2020 and had any such incident taken place, there was no reason for the complainant or her mother to keep quiet and it also cannot be said that they were not conversant with the law or had no brush with the court cases.

13. On the other hand, it is submitted by the Ld. APP that the allegations against the petitioner are grave and serious in nature. The petitioner is step father of the complainant and if the daughter is not safe with one's father, then she has no place to go. It is further submitted by the Ld. APP that the location of the petitioner as per the ID chart of mobile phone was found at the place of occurrence. It is further submitted that the complainant's statement U/s 164 Cr.P.C has been recorded wherein she has reiterated the version given in the FIR. It is submitted by the counsel for the complainant that the accused/petitioner may not be available for the trial as he has mentioned different addresses in the bail petition and there are chances that he may flee from the justice. It is further submitted that there is an independent witness who is the maid working at the time of the incident in the house of the complainant. As regard the delay in lodging the FIR, it is submitted that the complainant remained silent to save the matrimonial trauma of her mother and the marriage of the complainant was fixed during that period and if the fiance of the

complainant would have come to know about the incident, he would have broken the relationship.

14. No doubt, the allegations against the petitioner are serious in nature but the severity of the allegations is not the only consideration which should result in denial of grant of bail to the petitioner. The totality of the circumstances deserves to be seen before a person is granted or denied anticipatory bail. The Supreme Court in case titled **Siddharam Satlingappa Mhetre Vs. State of Maharashtra** (2011) 1 SCC 694 has laid down that the Court should be loath to reject the grant of anticipatory bail in as much as it impinges on the personal liberty of a person. Meaning thereby, unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied.

15. In the instant case, there is no denial to the fact that the petitioner and his wife who is the mother of the complainant are involved in various litigations amongst each other. The mobile phone has already been recovered and the petitioner has already joined the investigation on 10.02.2021, 11.02.2021, 12.02.2021, 15.02,2021, 16.02,2021 and 17.02.2021. As per the status report, filed by the state in compliance of the order dated 09.02.2021 of Sh. Gaurav Rao, Ld. ASJ, Saket Court, New Delhi, the verification of the complaints given by the petitioner has also been done and it has been found that the

applicant/petitioner has filed 3 complaints at P.S. Greater Kailash, wherein he has mentioned about his apprehension of being arrayed in a false case of molestation by his step daughter on the instructions of his wife. As per the status report, all the information with regard to the mobile phones being used by the petitioner has been supplied to the police.

16. As already observed hereinabove, the petitioner has joined the investigation on numerous occasions. There is a history of litigations in regard to the control of business between the petitioner and the mother of the complainant. Ld. Sr. counsel for the petitioner has also laid much emphasis on the delay in lodging the FIR and contended that there is no plausible explanation for the delay and the same is fatal to the case of the complainant. In the instant case, the alleged offence took place on 18.05.2020 and on the same very day, according to the complainant she had informed her mother about the incident and also discussed with her but the complaint was only lodged on 29.12.2020. In between this period from the record, it is evident that the petitioner and the mother of the complainant have been litigating.

17. No doubt, the delay in lodging the FIR is not always fatal and it depends upon the facts of each case. The reasons given by the counsel for the complainant for the delay is that the complainant never wanted to spoil the matrimonial home of her mother and secondly her fiance

would have left her if he had come to know about the conduct of the petitioner. Though, the complainant has tried to explain the delay, but the same can be looked into at the time of trial and as to what would be the fate of such delay would be seen at that particular stage.

18. The perusal of the FIR shows that no day, date, month and time has been given by the petitioner with regard to the incident prior to 18.05.2020. It is also not understood as to why she had not even once made any complaint to her mother and brother about the misconduct and sexual harassment being meted out by the petitioner and when at one stage according to the complainant, her mother even fell unconscious after drinking green tea which the petitioner brought for the complainant but was drunk by the mother of the complainant but then also the complainant failed to tell her mother and brother about the conduct of the petitioner as already observed.

19. In the instant case, the petitioner has been able to make out a case for grant of anticipatory bail on account of the fact that no recovery of any articles is to be effected inasmuch as this is a case where all the articles have been seized by the police as per the Status Report and he had joined the investigation at least six times.

20. There are two more considerations which are being taken into account for grant of anticipatory bail. Firstly, the petitioner is having roots in the society and no apprehension has been shown by the

prosecution that there is a chance of fleeing away of the petitioner from the process of law.

21. In so far as the contention of the petitioner tampering with the evidence or threatening the witnesses are concerned a generalize statement has been made by the counsel for the complainant and nothing has been shown to the Court in the form of any cogent and primfacie evidence which could show that he has threatened anybody or tried to tamper with the evidence.

22. It has also been argued by the Ld. APP that NBWs were obtained against the petitioner as he has not been joining the investigation but thereafter as per the status report, the petitioner has joined the investigation. Merely because the NBWs were issued against the petitioner cannot be a sufficient ground for denying the grant of anticipatory bail, if it is otherwise made out. Every reasonable person who has approached the Court for grant of anticipatory bail will keep away from the investigation for some time so that his bail application may not become infructuous.

23. Having regard to the facts and circumstances of this case, I am inclined to admit the petitioner to anticipatory bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the IO/SHO concerned with the condition

that he shall not tamper with the evidence or threaten any of the witnesses. The bail application is disposed of accordingly.

24. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

APRIL 23, 2021

Sumant

