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

Date of decision: 08th NOVEMBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 1400/2021 & CRL.M.A. 6628/2021**

AMIT MALIK

..... Petitioner

Through Mr. Lalit Valecha, Ms. Sadaf Iliyas
Khan, Advocates

versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for the State
with SI Bhojraj Singh, PS Maidan
Garhi
Mr. Sanjiv Dagar, Advocate for the
complainant

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 438 Cr.P.C has been filed for grant of bail in the event of arrest in FIR No. 80/2021 dated 06.04.2021 registered at Police Station Maidan Garhi for offences under Section 354, 354D, 506 IPC.
2. The facts leading to the instant case are as under –:
 - a) It is stated that on 06.04.2021, an FIR was registered against the petitioner on a complaint given by the complainant/prosecutrix stating that she met the petitioner through a common friend in the month of May, 2020 and became friends.
 - b) It is stated that the prosecutrix told the petitioner that she is contesting a divorce petition with her husband and there is a

- dispute regarding a flat with her husband. It is stated that the petitioner offered her to buy the said flat.
- c) It is stated that her husband got a stay order in August, 2020 and the prosecutrix informed the petitioner that she will not require any help regarding the said flat. It is stated that at the moment, the petitioner got to know that he will not be getting the flat, he started blackmailing and torturing the prosecutrix.
 - d) It is stated that in October, 2020 the petitioner asked the prosecutrix to accompany him to kalka mandir and picked her from her residence. It is stated that as soon as the prosecutrix sat in the car, the petitioner locked her inside the car and took her phone away.
 - e) It is stated that the petitioner recklessly drove the car and molested her. It is stated that he stopped near her home and continue to molest her, pressed her breast, twisted her arms, strangulated her neck and threatened her either to give her flat to him or get the bank papers signed. He also wanted her to sign blank papers and stated that if she did not sign the blank papers he will spoil her son's life and started abusing her.
 - f) It is stated that in October, 2020 the petitioner came to her house in Amar Colony, Lajpat Nagar and started pushing the prosecutrix in front of her son and she called her brother. It is stated that for three hours he was there and they had a heated quarrel. She stated that the petitioner was forcing her to sign the papers and transfer the flat in his name.

- g) It is stated that on 31st December, 2020 the prosecutrix, her friend and her husband went to celebrate new year at Jim Corbett. It is stated that the petitioner followed her and she requested the petitioner not to create any drama. It is stated that the petitioner took an obscene video of the prosecutrix and started blackmailing her to fulfil his sexual desires.
- h) It is stated that the petitioner installed GPS in her car and followed her at all locations. It is also stated that he has been stalking her on social media by making false accounts. It is further stated that the petitioner molested her on a number of occasions.
- i) On the basis of the said complaint, the instant FIR was registered against the petitioner.
- j) The petitioner filed an application under Section 438 CrPC for grant of bail in the event of arrest in the instant FIR but the same was rejected by an order dated 16.04.2021 passed by learned Additional Sessions Judge.
- k) The petitioner approached this Court by filing the instant petition for grant of bail in the event of arrest in FIR No. 80/2021 dated 06.04.2021 registered at Police Station Maidan Garhi for offences under Section 354, 354D, 506 IPC.
4. Heard Mr. Lalit Valecha, learned counsel for the petitioner, Ms. Kusum Dhalla, learned APP for the State and Mr. Sanjiv Dagar, learned counsel for the complainant/prosecutrix.
5. Mr. Lalit Valecha, learned counsel for the petitioner contends that the petitioner was a friend of the prosecutrix and had given her a sum of Rs.20,00,000/- towards earnest money against the total consideration of

Rs.32,00,000/- in respect of Om Sai Ram Apartments in Ward No.8, Mehrauli, New Delhi. It is stated that out of Rs.32,00,000/- a sum of Rs.16,00,000/- was transferred to the complainant/prosecutrix through bank and a sum of Rs.4,00,000/- was given in cash. It is also stated that the prosecutrix and the petitioner had a good relationship and the petitioner had given gifts like mobile phone.

6. Learned counsel for the petitioner states that two instances in the instant FIR pertains to incidents of October, 2020 and the FIR had been registered only on 06.04.2021. He contends that no reason has been given for the inordinate delay of six months in registering the FIR. He states that the petitioner sent a legal notice 26.11.2020 demanding registration of the flat in favour of the petitioner and handing over physical possession of the flat. The petitioner sent another legal notice dated 01.12.2020 to the prosecutrix to return a sum of Rs.40,00,000/- (double the amount i.e. Rs.20,00,000/- given by the petitioner to the prosecutrix) failing which appropriate legal action was to be taken against her.

7. It is stated that the complainant created a Whatsapp group 'Jim Corbett' and the petitioner was added in the said group at the instance of the complainant/prosecutrix. It is also stated that when the prosecutrix did not return the money, the petitioner had filed a complaint dated 04.03.2021 at Police Station Kotla Mubarkpur for offences under Section 420/406 IPC. It is further stated that the present FIR is nothing but a counterblast to the complaint given by the petitioner.

8. Mr. Lalit Valecha, learned counsel for the petitioner has taken this Court through the Whatsapp chats between the parties, photographs and the videos taken at Jim Corbett. He states that the photographs, videos and the

Whatsapp chats shows that the prosecutrix was not in any kind of pressure from the petitioner and they went together as a group.

9. Notice was issued on 29.04.2021. Status Reports have been filed. It is stated that the petitioner has joined investigation. Status Report indicates that the transactions between the complainant and the petitioner demonstrates deposit of a sum of Rs.16,00,000/- in the account of the complainant. Status Report also reveals that five FIRs were registered against the petitioner out of which the petitioner has been convicted in FIR No.253/2008 registered at Police Station Kotla Mubarkpur for offences under Section 323, 341, 427, 506, 34 IPC. Status Report also reveals that FIR No.118/2012 registered at Police Station Malviya Nagar for offences under Section 506, 509 IPC stands disposed of. Learned counsel for the petitioner states the two FIRs pertain to a matrimonial dispute between the petitioner and his erstwhile wife which stand settled.

10. Mr. Sanjiv Dagar, learned counsel for the complainant/prosecutrix contends that looking at the antecedents of the petitioner, he does not deserve anticipatory bail and he will be posing a constant threat to the prosecutrix.

11. A perusal of the material on record discloses that the petitioner and the complainant were known to each other. Status Report indicates that Rs.16,00,000/- have been deposited by the petitioner into the account of the complainant. The Whatsapp chats and the photographs also reveal that the petitioner and the complainant were friends. It is also a fact that the petitioner has filed a complaint against the prosecutrix on 04.03.2021, which was prior to the registration of the instant FIR. There is also a delay in filing

of the FIR for the incidents which alleged to have taken place in October, 2020.

12. The parameters for granting anticipatory bail have been succinctly laid down in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, wherein the Supreme Court has observed as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(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.

113. *Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.*

114. *These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means*

exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.”

(emphasis supplied)

13. Looking at the facts and circumstances of the case and the fact that the petitioner has joined investigation and has already given his mobile phone to the investigating agency and the investigation is nearing completion, this Court is of the opinion that no useful purpose would be served in keeping the petitioner in custody. In view of the above, this Court is, therefore, inclined to grant bail to the petitioner in the event of arrest on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of Rs.50,000/- with two sureties of the like amount out of which one of them should be the relative of the petitioner, to the satisfaction of the Trial Court.
- b) It is stated that the prosecutrix resides at A-172, Upper Ground Floor, Street No.24, Chattarpur Enclave Phase-II, New Delhi. The petitioner is directed not to come within five kilometres of Chattarpur Enclave Phase-II, New Delhi.
- c) The petitioner shall join investigation as and when called for.

- d) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- e) The petitioner shall give his address to the Investigating Officer and if he changes the address he shall intimate the same to the Investigating Officer.
- f) The petitioner shall not, directly or indirectly, contact or pressurize the prosecutrix, her family members or any other witness or tamper with evidence. In case any complaint is received from the prosecutrix that the petitioner is trying to contact her and trying to put pressure on her, if substantiated, the protection granted by this Court shall stand cancelled forthwith.
14. Accordingly, the bail application is disposed of along with the pending application(s), if any.

NOVEMBER 08, 2021

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SUBRAMONIUM PRASAD, J