

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

**Judgment reserved on: 02.12.2021**

**Date of decision: 24.12.2021**

+ BAIL APPLN. 4089/2021

YASHPAL SINGH

.... Petitioner

Through: Ms.Anu Narula, Advocate with  
Mr.Aman Usman, Advocate.

Versus

STATE

.... Respondent

Through: Mr.Mukesh Kumar, APP for  
State with SI Nikhil, PS Tigri.

**CORAM:**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**JUDGMENT**

**ANU MALHOTRA, J**

1. The applicant, vide the present application seeks the grant of anticipatory bail in relation to FIR No.413/2021, PS Tigri under Sections 376/328/506 of the Indian Penal Code, 1860 submitting to the effect that the allegations levelled against the applicant are wholly false and that the relations between the applicant and the prosecutrix, if any, were wholly consensual, that the prosecutrix indulged in sexual relations with the applicant despite being a married woman and that it was on the insistence of the prosecutrix that she became pregnant with the applicant.

2. The applicant has further submitted that after the pregnancy, the prosecutrix started making demands of money from the applicant

to the tune of Rs.15 lakhs and also stated that if the applicant did not pay the amount to her, she would implicate him in a false case and get him removed from his Government job.

3. Notice of the application was issued to the State with directions to the State to submit the copy of the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix.

4. The prosecutrix too joined the proceedings through Video Conferencing on 02.12.2021 and made her submissions.

5. As per the status report submitted by the State dated 21.11.2021 under the signatures of Inspector Rajnish Kumar, SHO, PS Tigri, a complaint was received at PS Tigri from the complainant in relation to a sexual assault with a lady named 'D', wife of 'X' and in her complaint she alleged that the applicant working in PNB as a Clerk, had sexually assaulted her and that she was three (3) months in the family way. As per the prosecution version, the complainant had stated through her complaint that in 2018 she went to PNB Khanpur due to some account related problems, where the complainant met the applicant who provided his mobile number for future reference and thereafter they frequently called each other and in 2018, the applicant/accused came to the complainant's house for collection of some documents and offered some sweets to the complainant whereafter the complainant became unconscious and when she regained her consciousness she found herself nude and found the applicant/accused lying with her on the bed and watching a video on

his mobile phone and threatened the complainant that if she told anything to anyone he would kill her husband.

**6.** As per the status report put forth, in March 2021, according to the complainant, she and the applicant left their homes and started living together at Mayur Vihar in a rented accommodation and the applicant/accused had stated that he would take a divorce and would marry her soon but now since the complainant had become pregnant, the applicant/accused was not responding to her calls and was asking her to abort her three (3) months pregnancy.

**7.** As per the said status report, during the course of the investigation on 16/03/2021, the medical examination of the prosecutrix was got conducted and during the medical examination, no exhibits were seized as the incident was very old and that the UPT test of the prosecutrix was conducted which indicated that she was three months in the family way. The statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix was also recorded as submitted by the State.

**8.** It is further submitted through the status report dated 21.11.2021 that during the course of the investigation conducted at PNB, Khanpur, New Delhi, it was found that account no. 1514000100989327 belonging to the complainant 'D' was opened on 12/09/2012 and that, the KYC of the complainant's account was done at the time of opening of the same.

**9.** Through the said status report dated 21.11.2021, the State has further stated to the effect that the hotel records regarding the stay of

the complainant and the applicant/accused were collected from Hotel Vinayak Inn, Pahad Ganj and according to the Hotel records, in December 2018, the complainant and the applicant/accused went to the hotel for one day and the hotel records were thus collected by the Investigating Agency. It has also been stated through the said status report that during investigation, a notice under Section 91 of the Cr.P.C., 1973 was also sent to the Reader to the SHO, PS Sunlight Colony to provide the details about the complaint which was filed by the complainant at the police station qua which it was informed that in September 2021, there was no complaint that had been filed by the complainant at that police station and consequentially, the application filed by the applicant seeking bail was dismissed as withdrawn as there was no complaint pending against him at PS Sunlight Colony.

**10. The status report further indicates to the effect that during investigation, it was learnt that on 18.03.2021, 'R', the husband of the complainant came to the police station and reported that his wife was missing and a missing report was lodged vide DD No-85A dated 18/03/2021 and that on 19/03/2021 the complainant came to the police station alongwith with her counsel and gave her written complaint against her husband regarding domestic violence and also stated that she was not kidnapped by anyone and that then she was residing with her friend, though, she did not disclose the name of the friend and stated further that she was not willing to live with her husband as a consequence of which the missing complaint was filed.**

11. The State submitted the copy of the MLC of the prosecutrix dated 21.10.2021 wherein, in relation to the sexual assault history, it was mentioned to the effect:-

***“As per victim, she is married x 10 years. H/O cohabit with husband till March 2021. Separated from husband at present. Presently staying with Mr. Yashpal Singh (friend). Last intercourse 20/08/2021 (2 month back).”***

12. Though, the prosecutrix was not administered oath by the Court, queries were put to her by the Court and in reply to a specific Court query, she stated that there was no question put to her as to how she stayed with Mr. Yashpal and she did not tell him that he was a friend. However, as per the sexual assault history referred to hereinabove as prepared at the AIIMS, New Delhi, the prosecutrix had stated that she had co-habited with her husband till March 2021 but had separated from her husband and was living with Yashpal Singh i.e. the applicant, a friend and her last intercourse was on 20.08.2021 i.e. two months prior to her examination with it being indicated through the sexual assault history of the prosecutrix that she had stated that she had co-habited with her husband till last March 2021.

13. The prosecutrix in reply to a specific further Court query stated that she did tell the doctor as mentioned at page 9 of the MLC that she did want to continue with the pregnancy and was not willing for the termination of the pregnancy and in reply to a further Court query stated that though the pregnancy was not consensual now that it was already there, in as much as, the child was also a part of her body and

its termination would affect her too, she does not want the termination of the pregnancy.

**14.** *Inter alia*, the prosecutrix submitted that she had been giving repeated information to the Investigation Officers of the case i.e. to the Investigation Officer in the present case as well as to the Investigation Officer of the application before the learned Trial Court that persons known to her have been receiving threats in relation to the present case as given on behalf of the applicant. The prosecutrix further submitted whilst opposing the bail application that the applicant would harass her and had been torturing her repeatedly.

**15.** The Investigation Officer of the case, SI Shalu in reply to a specific Court query submitted that no written complaint had been given to her by the prosecutrix though the Investigation Officer had advised her to give the same, if she so wanted. The Investigation Officer *inter alia* stated that the complaint that the prosecutrix had made to her was to the effect that there were telephone calls that were received by the relatives of the prosecutrix from the side of the applicant, and that the child conceived by the prosecutrix was that of the applicant and not of her spouse.

**16.** The prosecutrix in reply to a specific Court query in view of submissions made by the Investigation Officer as to why the applicant had been informing the persons known to the prosecutrix that the child belonged to the applicant, stated that the applicant had been stating that he would teach her a lesson and would also teach her spouse a lesson stating that after he got bail, he would show them. *Inter alia* the

prosecutrix stated in reply to a further specific Court query that the applicant is not in custody and is absconding and is not going to his house and is not going to his office also and that he had been stating that he would blackmail her and her spouse.

**17.** The applicant, through his application has submitted that when the complainant had made a demand of Rs.15 Lakhs from him after she became pregnant, the petitioner had filed a written complaint with the police, copy of which is placed on record as filed initially on 29.09.2021 vide diary no.4539 and forwarded ultimately to the SHO, PS Tigri for necessary action and report by the ACP, PS Sangam Vihar vide diary no.3233-SPC on 02.10.2021.

**18.** As per this complaint made by the applicant to the DCP, Hauz Khas, the applicant submitted that he knew 'D', wife of 'X' for a few years and that she had been trapping him in a love trap and he had got into an affair with her and after the affair he was very much attracted towards her and after some time, she asked him to live with her and said that she was not happy with her husband and she wanted to live with the applicant and thus, he consented to that and on or around 18.03.2021, they started living in a rented house at Mayur Vihar where he purchased and placed a plastic cooler, a double bed, a double door fridge, a 32 inch LED, gas stove, cylinder, mixer so that they could live their life easily and after some time, 'D' had told him that she had got pregnant and after pregnancy her behaviour towards the applicant started changing and on or around 10.09.2021, 'D' with the assistance of her husband vacated the rented house without informing the

applicant and she and her husband started pressurizing the applicant in order to implicate him in a false rape case and also threatened that she would finish his job.

19. The applicant submits that the prosecutrix had been building pressure on him to meet her and when he denied meeting her illegitimate and illegal demands, she went to the Police Station, Sunlight Colony and started calling the applicant on his mobile phone from outside of the police station and that when the applicant denied meeting her, she sent the police from PS Sunlight Colony to the office of the applicant on 29.09.2021 wherefrom the applicant was taken to PS Sunlight Colony by the police and on reaching there, the applicant was surprised to note that even the husband of the prosecutrix was present at the police station and then the prosecutrix started demanding Rs.15 Lakhs from the applicant threatening that otherwise she would file a false case against him. As per the applicant's contention, the police also became a party and forced the applicant to arrange the money within a week and the applicant/accused thus, lodged his complaint against such illegal demands made by the prosecutrix to the DCP, South vide DD No.4539 dated 29.09.2021.

20. On behalf of the applicant, reliance was placed on the verdict in ***“Rohit Chohan Vs. NCT of Delhi” 2013 SCC Online Del 2106***, ***“State Vs.Sandeep”*** in CrI.L.P. 532/2019 dated 25.09.2019 ***and “Dr Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra” (2019) 18 SCC 191*** , and ***“Bhushan Lal Khanna Vs. State (Govt. of NCT of Delhi)” 253 (2018) DLT 173*** to contend to the effect that the applicant

be released on anticipatory bail in the instant case in the event of his arrest.

**21.** Vide the FIR in the instant case lodged on 22.10.2021 pursuant to the prosecutrix having gone to the police station on 21.10.2021 where a written complaint was signed by her, the contents of which indicate the acquaintance between the applicant and the prosecutrix from 2016 onwards, whereafter, the applicant is stated to have helped the complainant in getting her account reopened in 2018 for which the applicant had gone to the house of the complainant in the year 2018 to take her ID proof and signatures for the reopening of her bank account when the applicant had allegedly brought some stuff to eat and after having the same, the complainant became unconscious and after she woke up, she found herself nude and found the applicant in bed with her watching a video on the mobile phone which he had made of her and when the prosecutrix confronted him as to what was all that, the applicant told her that she did not need to say anything to anyone and that her videos were in his mobile and in some days he would divorce his wife and would marry her and that she would also have to divorce her husband.

**22.** As per the complaint made by the prosecutrix, even after that day, the applicant started visiting her house despite her refusal and kept threatening her that he would make the video viral and thereafter, had also told the prosecutrix that he would be transferred from Delhi and she should accompany him and should not tell her husband or else he would kill her husband and would bring her to disrepute, whereafter, the applicant allegedly told her that he wanted a child and

took her to the doctor and got her tests done and got his own tests done, brought her a medicine on which her husband became suspicious and checked from the doctor and learnt that the applicant had given his name as the husband of the prosecutrix and she did not tell anything to her husband as the applicant had threatened her not to tell anything to anyone and that she informed the applicant that her husband had come to know his name and he was coming home and she would tell him everything on which the applicant told her that he would come before her husband came and would take her and asked her to come out of the house and to accompany him or else it would not be good for her and for her husband as he had her video and on being so threatened, the prosecutrix was compelled to leave her house as on 18.03.2021 the applicant came from his office at 2.00 PM and kept repeating that she should come out of the house and in the event of refusal to do so, he told her that he would come into the house and would humiliate her in the lane and when her husband at 6.00 PM went to the terrace, the applicant came on his bike beneath the house and took her away from the house to the house of his acquaintance at Shadipur and got her mobile closed and on the next date i.e. on 19.03.2021, he took her to the Tis Hazari Courts, Delhi and told her to get a false complaint typed and sent her with the lawyer to the police station to say that she had left the matrimonial home of her own, whereafter, the missing report was lodged by her husband on 18.03.2021 and on 19.03.2021, the applicant took her to the OYO Hotel where he took a room on rent and kept her there and on 20.03.2021, the applicant took another room on rent and from

24.03.2021, the applicant also started living with her and got a false agreement executed in her name and had sexual relations with her everyday for almost a month, *inter alia*, with it having been averred in the complaint that on 19.04.2021, it was her sister's wedding which she was allowed to attend by the applicant who also stated that she should say there that she was troubled by her spouse and of her own had left her matrimonial home and was living separately from her husband and on 21.04.2021, the applicant brought her back to Bijnor and on 17.05.2021, the applicant vacated the room at Lajpat Nagar because the mother of the prosecutrix had come there to take her and because the applicant had threatened her that if she went, everyone would be killed and thus, she did not go (apparently with her mother) and the applicant with the assistance of the son of his Tau took a room on rent at Mandawali, whereafter, in as much as the husband of the prosecutrix had come to know of the house where she was living at Mandawali and the prosecutrix between 13.07.2021 to 17.08.2021 continued to stay with the applicant, on 13.07.2021, the applicant and the prosecutrix shifted again to Mayur Vihar, whereafter, the applicant had left stating that he would live with a person with whom he works because he did not want the husband of the prosecutrix to know of the matter and he would keep visiting her of his own and on 31.08.2021 when the applicant learnt of her pregnancy, he asked her to get her pregnancy aborted and when she refused to do so, the applicant ran away from Mayur Vihar and threatened to kill her if she did not get the child aborted and lastly on 07.09.2021, the applicant again went to her and asked her to get the child aborted and if she did not, she would

have to live alone and thus, out of fear she had vacated the house at Mayur Vihar on 10.09.2021 without informing the applicant, whereafter the applicant telephoned her and told her that she should tell him where she was and if she did not do so, he would get her falsely implicated in a case of blackmailing and he repeatedly asked her to get the child aborted on which she made the complaint.

**23.** Through the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix recorded on 22.10.2021, which is just the next day after the complaint given by the prosecutrix to the police, it was stated by the prosecutrix that she had met the applicant in 2013 and he used to work in the PNB where they had exchanged their numbers and at the behest of the applicant, she had got her mother's account opened and there used to be some conversation between them, whereafter, in 2016, she again met the applicant in the same PNB Branch and they again exchanged their numbers that she was working as a Security Guard in a Mall at that time and the applicant used to meet her at the Mall and they used to have conversations sometimes and the applicant used to help her with her bank work and in 2018, she had to get her account reopened and was not well and thus, the applicant had come to her house as he used to live nearby and he brought something for her to eat on eating which she became unconscious and the applicant raped her and made a video of her and showed it to her and blackmailed her and thereafter kept meeting her after that day and once or twice, he took her to a OYO and their constant meetings continued thereafter and whenever the applicant met her, he had

physical relations with her, he used to come to her house also and this continued prior to 2020 and during the lockdown, they used to have conversation on the phone sometimes and from July 2020, the applicant again started coming to her house and this continued till March 2021 and on 15.03.2021, the applicant took her with him from her house and at one night they stayed at Shadipur at the applicant's friend's house and on 19.03.2021, the applicant took her to the OYO, Karol Bagh and on 20.03.2021 took her to a room at Lajpat Nagar and they started living together from 24.03.2021 and lived together till 17.05.2021 and then went to Mandawali and then Mayur Vihar, Phase-III during which she became pregnant and on learning this, the applicant left her in September 2021 and is now defaming her and that he had told her that he would divorce his wife and would marry her but the prosecutrix had stated that she was not agreeable to the same.

24. Through her statement, she further stated that the applicant had made her video and was blackmailing her on the basis of the same and had repeatedly raped her and had taken advantage of her.

### **ANALYSIS**

25. There are certain photographs that the applicant has placed on record as Annexure-A3 to the petition and the said photographs do not show any constraint on the feelings of the prosecutrix towards the applicant and do not indicate *prima facie* that those photographs were taken under any fear of any video being made viral. Whereas, the averments in the FIR are to the effect that the applicant did not marry her after she was in the family way and left her thereafter, through her

statement under Section 164 of the Cr.P.C., 1973 dated 22.10.2021, a day after the FIR was lodged on her complaint, the prosecutrix has stated that though the applicant told her that he would divorce his wife and marry her, she was not agreeable to the same. The said averments are contrary to each other *prima facie* through the statement which forms the complaint on the basis of which the FIR was registered and her statement, a day later under Section 164 of the Cr.P.C., 1973.

**26.** Furthermore, the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix which is on oath *prima facie* indicates the repeated relations between the applicant and the prosecutrix even after the alleged incident when the applicant had come to her house, had given her something to eat and she had then allegedly become unconscious -whereas according to her complaint, the applicant was lying in bed with the prosecutrix and the prosecutrix was nude, whereas through her statement under Section 164 of the Cr.P.C., 1973 after she had become unconscious, the applicant had raped her and had made her video and had blackmailed her, which statement under Section 164 of the Cr.P.C., 1973 also states that the applicant thereafter kept meeting her and even took her to the OYO room once or twice and thereafter, they had constant meetings and every time the applicant met her, he had sexual relations with her, he used to visit her house and this went on in the year 2020 and after the lockdown commenced again in July 2020 and the applicant even took her away from her house on 15.03.2021 and kept her at different locations that the prosecutrix did not complain to the police despite her being

repeatedly moving from one place to another with the applicant, coupled with the factum that on the missing complaint lodged by her husband vide DD No.85A dated 18.03.2021, on 19.03.2021 the complainant had gone to the police station along with her counsel and gave a written complaint against her husband regarding the domestic violence and stated that she was not kidnapped by anyone and lived with her friend and did not disclose the name of her friend and that she was not willing to live with her husband, as a consequence of which the missing complaint was filed, is an aspect which speaks volumes *prima facie* against the alleged factum of forcible relations between the applicant and the prosecutrix.

**27.** The status report dated 21.11.2021 submitted under the signatures of the SHO, PS Tigri also indicates that during investigation, hotel records regarding the stay of the complainant and the applicant/accused were collected from Hotel Vinayak Inn, Pahad Ganj and according to the Hotel records, in December 2018, the complainant and the applicant/accused went to the hotel for one day, and qua the prosecutrix having accompanied the applicant to a Hotel in 2018, there is not a word in the statement which forms the complaint nor in the statement of the prosecutrix under Section 164 of the Cr.P.C., 1973.

**28.** **The factum that the prosecutrix who is aged 30 years even in the sexual assault history at the AIIMS had stated that she was married for 10 years, cohabited with her husband till March 2021 and was separated from her husband on the date of her**

**examination i.e. 21.10.2021 and that she was living with Mr.Yashpal Singh i.e. applicant herein (*friend*) with her last intercourse on 20.08.2021 i.e. two months prior from 21.10.2021, coupled with the factum that the prosecutrix who was found to be in the family way, wanted to continue her pregnancy and was not inclined for a medical termination of her pregnancy, are also aspects which defy reason if relations between the applicant and the prosecutrix were not consensual.**

**29.** The prosecutrix in reply to a specific Court query on 02.12.2021 in relation to this aspect had stated that there was a male doctor at AIIMS and she had not told him as to how she stayed with the applicant and did not tell him that he was a friend and stated that she had told the doctor that she wanted to continue with the pregnancy and was not willing for the MTP though the pregnancy was not consensual, in as much as, the child was also a part of her body and its termination would affect her, she does not want the termination of the pregnancy.

**30.** Significantly, though the prosecutrix whilst opposing the bail application of the applicant submitted that the release of the applicant on bail would result into the applicant harassing her as he had been torturing her repeatedly, *inter alia*, submitted that she had been giving repeated information to the Investigation Officers of the case i.e. to the Investigation Officer in the present case as well as to the Investigating Officer of the application before the learned Trial Court that persons known to her have been receiving threats in relation to the

present case on behalf of the applicant qua which the Investigation Officer of the case, SI Shalu in reply to a specific Court query submitted that no written complaint had been given to her by the prosecutrix though the Investigation Officer had advised her to give the same, if she so wanted. The Investigation Officer *inter alia* stated that the complaint that the prosecutrix had made to her was to the effect that there were telephone calls that were received by the relatives of the prosecutrix from the side of the applicant, that the child conceived by the prosecutrix was that of the applicant and not of her spouse.

**31.** The prosecutrix further in reply to a specific Court query submitted that the applicant had been stating that he would teach a lesson to her and her spouse after he gets bail.

**32.** The factum that the prosecutrix has stated that she wants to continue with the pregnancy, coupled with her submission that the applicant is informing the relatives of the prosecutrix that the child is that of the applicant with similar allegations levelled against the applicant by the prosecutrix, coupled with the repeated physical relations between the prosecutrix and the applicant from 2018 onwards and the photographs placed on record as Annexure-A3 which do not depict any fear of any kind on the face of the prosecutrix, coupled with the factum that the prosecutrix is a married lady aged 30 years and has been the acquaintance of the applicant since the year 2013, it is essential to advert to the observations in **“State Vs. Sandeep”** (supra), a verdict of this Court in CRL.L.P.532/2019 dated

25.09.2019 with specific reference to observations in paragraph 21 thereof, which reads to the effect:-

***“21. Inducement to have a physical relationship by promising marriage must have a clear nexus with the moment promise of marriage cannot be held out as an inducement for engaging in sex over a protracted and indefinite period of time. In certain cases, a promise to marry may induce a party to agree to establish sexual relations, even though such party does not desire to consent to the same. Such inducement in a given moment may elicit consent, even though the concerned party may want to say no. Such false inducement given with the intention to exploit the other party would constitute an offence. However, it is difficult to accept that continuing with an intimate relationship, which also involves engaging in sexual activity, over a significant period of time, is induced and involuntary, merely on the assertion that the other party has expressed its intention to get married.”***

**33.** The factum that through the statement under Section 164 of the Cr.P.C., 1973, the prosecutrix has stated that she was not agreeable to the applicant divorcing his wife and marrying her and the continuation of the pregnancy by the prosecutrix *prima facie* lend credence to the contentions raised by the applicant that relations between the applicant and the prosecutrix even after the first alleged incident of rape which too is refuted, continued to be without any duress or force.

**34.** As has already been observed hereinabove, through the FIR and through the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix, there is no mention in the statement of the prosecutrix of the applicant and the prosecutrix having checked in any hotel as put forth by the status report. In the circumstances, it is considered

appropriate to allow the applicant to be released on anticipatory bail in the event of arrest in the facts and circumstances of the case subject to his filing a bail bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with one surety of the like amount to the satisfaction of the learned Trial Court subject to further conditions to the applicant to the effect that:-

- he shall not leave the country under any circumstances;
- he shall keep his mobile phone on at all times;
- he shall drop a PIN on the google map to ensure that his location is available to the Investigation Officer;
- he shall make no attempt to intimidate the prosecution witnesses in any manner;
- he shall commit no offence whatsoever during the period that he is on anticipatory bail in the instant case.

**35.** The application is disposed of accordingly.

**36.** Nothing stated hereinabove shall amount to any expression on the merits or demerits of the proceedings before the learned Trial Court in relation to the charge sheet, if any, filed in the instant case.

**ANU MALHOTRA, J.**

**DECEMBER 24th, 2021**

*'Neeta Chopra'*