

Bail Application No.1614/2021

State Vs. Tanveer

FIR No. 323/2021

PS. Bhajan Pura

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U/s. 376D/506/313 IPC & Section 4 of Dowry Prohibition Act and
4 of Muslim Woman (Protection of Rights on Marriage) Act

Court hearing through Webex online meeting

25.08.2021

Present: Sh. R. K. Satyarthi, Ld. Addl. PP for State with IO SI
Renu.
Mr. Pradeep Teotia, Ld counsel for applicant.
Mr. Nizamuddin, Ld counsel for complainant.

Report filed by IO.

Arguments on bail application heard.

Ld. Counsel for accused has submitted that accused Tanveer is the husband of the complainant and has not divorced her till date due to he has not committed any offence under section 4 of Muslim Woman (Protection of Rights on Marriage) Act as alleged in the FIR. It is further submitted that complainant was well aware that accused had not committed any offence due to she has introduced an entirely new story of co-accused Naseem that he allegedly committed the rape upon her just to get booked her husband in a false gang rape case, whereas she has admitted during conversation with family members of the accused that she has falsely implicated the accused at the instance and under the influence of her Advocates. It is further submitted that even she was reluctant to make any statement u/s 164 Cr. PC, but has made her under the pressure of advocates, whereas the whereabouts of co-accused Naseem were/ are not known to her and even cell locations of said Naseem as well as complainant were at different places at the time of alleged incident which has proved that the entire story is concocted. It is further submitted that accused has been lying in JC since 15/07/2021 and is ready to join investigation as

and when directed by police whereas further custody of accused is not required for any investigation purpose as investigation is almost complete. It is further submitted that accused is ready to abide by all bail conditions likely to be imposed by this court and accused may be released on bail.

On the other hand, Ld. Addl. PP for State as well as Ld. Counsel for complainant has strongly opposed this application on the ground that the allegations against the accused are of serious in nature and accused has already divorced the complainant due to section 4 of Muslim Woman (Protection of Rights on Marriage) Act is attracted against him. It is further submitted that accused has committed the rape upon the complainant against her wishes and even also allowed his friend Naseem to do the similar act and this act of the husband is well covered under the category of gang rape. Ld. Counsel for the complainant has further argued that IO is not cooperating with the complainant and rather has been cooperating with accused as well as family members and it may be verified from the cell details of IO that she has been regularly in touch with the father-in-law of the complainant. It is further submitted that IO has been virtually harassing the complainant by repeatedly calling her to PS and putting pressure upon her to compromise this matter. It is further submitted that merely cell location of co-accused cannot determine that accused Naseem was not present at the spot at the time of alleged incident and all the facts including contents of pen drive would clear only during investigation and are also subject to trial and all the pleas are defence of the accused which cannot be considered at this stage and bail application is liable to be dismissed.

However, IO has submitted that she has verified that the alleged accused Naseem, who is co-accused, has personal clash with

Ld. Counsel for complainant and Ld. Counsel has filed multiple cases against Naseem and his family and the son of the accused has provided the documents to this effect. It is further submitted that IO called the complainant to join investigation and also verification of the contents of pen drive, but ld. Counsel for complainant made a PCR call thereby stating that complainant had been confined by her. It is further submitted that the contents of pen drive have been duly verified and found correct.

I have heard the arguments of both parties and gone through the record. Accused has been lying in JC since 15.07.2021 and was arrested with the allegations of gang rape of his wife with one Naseem, but identity of that Naseem as accused could not be verified by the IO. IO has categorically admitted that the involvement of Naseem could not be verified from any angle and rather previous enmity between the ld. Counsel for complainant and Naseem has revealed. Even cell locations of Naseem and complainant were found at different places at the time of alleged incident which has created a doubt in the involvement of accused to this case.

Admittedly, complainant and applicant herein are husband and wife and the factum of divorce is matter of investigation as well as trial to attract the provisions of Muslim Woman (Protection of Rights on Marriage) Act. However, the conversation amongst the prosecutrix, brother and sister-in-law of accused, duly verified by the IO, has proved that she has admitted many facts in favour of the applicant including the role of her advocate in lodging this FIR. Though Ld. Counsel for complainant has alleged that this conversation was under duress, yet complainant has alleged this duress only after filing of the transcript and pen-drive by the accused. Besides it, the factum of gang rape is yet to be ascertained, whereas

prosecutrix has denied for her internal medical examination to prove this fact and case is mainly based upon the oral testimony of the complainant. It is pertinent to mention here that the complainant has been visiting the house of the accused despite the allegations of gang rape against her husband and she has tendered any plausible explanation to it.

In view of allegations against the accused, conversation of prosecutrix with family members of accused and her admission towards it, alleged role of the advocates in lodging this FIR and also the submission of IO regarding evidence against co-accused Naseem, I am of the considered opinion that all the facts would clear only after completion of investigation, but during this period, accused has strong defence and is entitled for bail. Accordingly, I hereby admit accused **Tanveer** on bail, on furnishing of personal bond of **Rs. 50,000/- and one surety of like amount**, to the satisfaction of Ld. MM/ Link MM / Duty MM concerned.

Accused shall join investigation as and directed by the IO and shall not try to influence witnesses in any manner and shall have no contact with any witness or complainant, directly or indirectly. He shall not leave Delhi without the permission of this court, provided he is permanent resident of Delhi. Accused shall share his mobile number and location with IO so that he may be contacted in any exigency. Any violation of conditions shall attract cancellation of this bail.

However, the observations of the court herein above shall not affect the merit of this case.

Copy of order be sent to counsel for applicant through email, if email is provided.

(Devender Kumar
ASJ-02(NE), KKD/Delhi/ 25.08.2021