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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2337/2018**
AMIT BALGUHAR Petitioner
Through: Mr. Akshai Malik, Mr. Khawar
Saleem Advs.

versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP for
State

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
11.02.2021
(through video conferencing)

The matter is listed today in terms of proceedings dated 22.12.2020 whereby the applicant who was granted interim bail vide order dated 04.09.2020 subject to terms and conditions as imposed thereby which stood extended vide orders dated 20.10.2020 and 03.12.2020 which stood further extended vide order dated 22.12.2020 till date, has submitted to the effect that his child is suffering from abdominal TB. The documents that have been submitted in relation thereto were directed to be verified by the State and the status report has been submitted by the State vouching the correctness of the documents that have been submitted by the applicant qua the ailment of his child. Apart from the said aspect, it is essential to observe that Bail Apnl.2337/2018 was filed by the petitioner seeking grant of bail in relation to the FIR No.436/2017, PS Safdarjung Enclave, under Sections 376D/506 of the Indian Penal Code, 1860 with submissions made on behalf of the

applicant that the applicant has been falsely implicated in the instant case.

During the course of proceedings of the bail application itself, it is indicated that the applicant was released on interim bail vide order dated 27.02.2019 till the date 09.08.2019 and vide order dated 08.08.2019, the applicant was directed to surrender back to custody with it having been observed that it would be inadvisable to extend the interim bail at that stage.

Vide order dated 04.10.2018 when the matter had been renotified for the date 12.11.2018, it had been renotified with the hope and expectation that the prosecution and the learned trial Court would make all endeavour to ensure that the statement of the prosecutrix was recorded without delay. The said statement of the prosecutrix had not been recorded till the date 03.09.2019. The prosecutrix was then and is apparently even now in the USA. The attempts for video conferencing for recording of the statement of the prosecutrix did not succeed for long and on 03.09.2019, on behalf of the prosecutrix the counsel for the prosecutrix placed on record an email received from the prosecutrix that the prosecutrix was not willing to come to India and she had been medically advised against travel and it was not within her province to arrange the video conferencing process for recording of her testimony. It had also been submitted on behalf of the prosecutrix that the Indian Consulate was not assisting in getting the video conferencing schedule fixed.

Vide order dated 11.09.2019, a status report was called for from the learned trial Court for the date 30.10.2019 qua the information and compliances sought of details as detailed in proceedings dated 11.09.2019 in relation to:

“1. Complete details of video Conferencing System of the other

end i.e. system type and configuration.

2. *IP Number of Video Conferencing System of the distant end.*
3. *Time for establishing linkage.*
4. *Contact numbers including tax, mobile and e-mail address of distant end.*
5. *Address of Video Conferencing facility from where the witness will depose.*
6. *Availability of Coordinator at remote point.”*

Whereafter, the prayer that was made by the applicant seeking grant of interim bail was directed to be considered but the prayer that was made on that date on behalf of the applicant to be released on interim bail till the next date of hearing was declined.

The proceedings in the learned trial Court indicated vide a report received from the learned trial Court for the date of hearing 07.11.2019 were to the effect:

“On the last date of hearing it was directed that after coordinating with the concerned authorities in USA, DCP/SHO concerned shall also inform the court timings as per Indian Standard Time during which the testimony of the prosecutrix can be recorded through video conferencing on 03.12.2019, 04.12.2019 and 05.12.2019. However, no such report has been received.

No report regarding coordinating with the concerned authorities for recording evidence of prosecutrix through video conferencing on 3.12.2019, 04.12.2019 and 05.12.2019 has been received from SHO/DCP concerned in terms of previous order. The report be called in terms of previous order from SHO/DCP concerned for next date. Put up for filing of reports/compliances on 16.11.2019.”

In as much as it was reported by the learned trial Court as brought forth through the status report that efforts were being made by the learned trial Court and the MHA with the consent of the DCP concerned, South

District for recording of the testimony of the prosecutrix through Video Conferencing. The matter was renotified for 16.11.2019 with the status report having been called for from the learned trial Court qua the testimony to be recorded by the learned trial Court. During the course of proceedings, however though all modalities for the recording of the testimony of the prosecutrix had been arranged in the learned trial Court and in fact the status report submitted by the State for the date 30.01.2020 indicated that the testimony of the prosecutrix through video conferencing was recorded from 21.01.2020 to 23.01.2020 and the matter had been renotified from 25.02.2020 to 26.02.2020 for the cross examination of the prosecutrix, however, the cross examination of the prosecutrix could not be conducted from 25.02.2020 to 26.02.2020 due to non-receipt of the timing of the VTC and the technical directive from the USA side. The matter in the circumstances was renotified for 30.03.2020 with Court notice issued to the Standing Counsel for the Union of India also.

During the course of proceedings on the date 06.05.2020 qua Crl.M.B.5900/2020 filed on behalf of the applicant seeking interim bail for a period of 2 months pending hearing in the matter Bail Appln.2337/2018, the applicant was released on interim bail for a period of 8 weeks subject to terms and conditions as imposed thereby. Vide order dated 25.06.2020 however, Crl.M.A.8204/2020 filed by the applicant seeking extension of interim bail granted vide order dated 06.05.2020 was dismissed and the applicant was directed to surrender on the expiry of his interim bail and the matter was renotified for 21.08.2020 in view of the prayer made on behalf of the applicant seeking an early hearing.

The status report dated 20.08.2020 of the State brought forth that the

matter was fixed before the learned trial Court for further examination of the prosecutrix through video conferencing for 24.09.2020 and 25.09.2020, on which date, learned counsel for the prosecutrix appointed by the learned trial Court submitted that she would be seeking the discharge in the matter in as much as the prosecutrix had apprised her that she did not want her to continue as the counsel in the matter and that the learned counsel for the prosecutrix also submitted that the Attorney in the US Department of Justice had informed that the prosecutrix did not seek to pursue with the matter any more and a mail had been copied also to the learned counsel for the prosecutrix. The copy of the same was directed to be placed on record with directions to the State to verify the said submission.

On behalf of the State for the date of hearing 04.09.2020, the status report dated 02.09.2020 under the signatures of Inspector Umesh Barthwal, SHO, Police Station Safdarjung Enclave along with the reply dated 02.09.2020 of the Ministry of Home Affairs, IS-II Division/Legal Cell was placed on record vide which the Ministry of Home Affairs had forwarded a copy of an email dated 22.08.2020 received from the Consulate General of India, Chicago and an email dated 18.08.2020 from the U.S. Department of Justice along with the copy of a letter dated 18.8.2020 under CRM-182-67881 from the U. S. Department of Justice informing that the prosecutrix no longer wished to provide testimony or to have any further involvement in the matter. The letter dated 18.08.2020 from the Director and Trial Attorney of the U. S. Department of Justice to the Under Secretary, Government of India, Ministry of Home Affairs, was categorical to the effect that in view of the request of the Indian Authorities to the U. S. Authorities to facilitate the testimony of a rape victim, i.e., the prosecutrix, in the instant case, via video

teleconferencing the prosecutrix had informed the U. S. Authorities that she no longer wished to provide her testimony or to have any further involvement in the matter and that she had asked not to be contacted about this matter again by the Indian authorities for any reason and that she had also asked to have no further contact with her attorney and that the U. S. Department of Justice , Criminal Division had thus requested the Ministry of Home Affairs, Government of India, to forward this information to the appropriate Indian Authorities and taking into account the aspect which was verified by the State vouched to be true through the Ministry of Home Affairs, Government of India, that the prosecutrix did not wish to have any further Teleconferencing in the matter to depose in relation to the FIR registered, it was considered appropriate vide order dated 04.09.2020 to grant the interim bail for a period of 8 weeks subject to terms and conditions as imposed thereby and that the applicant continues to be on interim bail thereafter pursuant to order dated 04.09.2020.

It has been submitted by learned counsel for the applicant which is not refuted on behalf of the State that the conditions imposed vide order dated 04.09.2020 have not been violated by the applicant at any stage.

Taking the totality of the circumstances of the case into account, without any observations on the merits or demerits of the trial that is in progress in relation to the FIR No.436/2017, PS Safdarjung Enclave, under Sections 376D/506 of the Indian Penal Code, 1860, it is considered appropriate to make the terms of the order dated 04.09.2020 whereby the applicant was granted interim bail, absolute and Bail Appln. 2337/2018 is disposed of accordingly with directions that the applicant is allowed to be released on bail in the instant case on filing a personal bond of Rs.1 lac with

two sureties of the like amount to the satisfaction of the learned trial Court with directions that:

- he would give his telephone numbers of himself and at least one of his responsible family members and of the sureties to the Trial Court and further to the Investigating Officer;
- he shall not leave the city of Delhi without the permission of the Trial Court and in any event shall not leave the country;
- he shall make no attempt to influence any of the prosecution witnesses;
- 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 Investigating Officer;
- he shall commit no offence whatsoever.

ANU MALHOTRA, J

FEBRUARY 11, 2021

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