

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

Date of decision: 31st JANUARY, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 679/2021 & CRL.M.A. 3233/2021**

RAJESH SURI @ RAJ SURI Petitioner

Through Mr. N. Hariharan, Senior Advocate,
with Mr. Siddharth S. Yadav, Mr.
Samarth K. Luthra, Ms. Akriti Gupta,
Advocates.

versus

STATE Respondent

Through Ms. Richa Kapoor, ASC for the State,
with Insp. Usha Sharma, PS Moti
Nagar
Ms. Malvika Trivedi, Senior
Advocate, with Mr. Rajeev Kumar,
Advocates for the Complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition has been filed under Section 438 Cr.P.C., seeking grant of anticipatory bail in FIR No. 668/2020 dated 31.10.2020 registered at P.S. Moti Nagar under Sections 376/328 of the Indian Penal Code, 1860 (*hereinafter*, "IPC").

2. The facts, in brief, leading up to this petition are as follows:

- a) It is stated that the prosecutrix is a housewife who joined a social media website as a means of comfort because she was

living with a husband who was short-tempered. Two years before the FIR was registered, she received a friend request from one Raj Suri (the Petitioner herein) and they soon exchanged mobile numbers. The Petitioner disclosed that he was disturbed on account of his wife's death and became emotionally close to the prosecutrix. The Petitioner would ask the prosecutrix to meet him often, however, she was not inclined to do so. It is stated that on 28.10.2020, the Petitioner requested the prosecutrix to meet him as he wished to discuss something that could not be conveyed over the phone. The prosecutrix met him and the meeting concluded safely.

- b) It is stated that on 30.10.2020, the prosecutrix received a call from the Petitioner who informed her that he was near her house. Though the prosecutrix was initially hesitant as her husband and children were not home, she relented and asked the Petitioner to come up the stairs. It is stated that the Petitioner was inebriated and upset. At this juncture, the prosecutrix asked the Petitioner if she could call her husband, however, the Petitioner stopped her from doing so. It is stated that the Petitioner brought alcohol along with him and emotionally blackmailed the prosecutrix into drinking alcohol as a result of which she felt giddy. It is stated that the Petitioner then took advantage of the prosecutrix's vulnerable condition and forcibly had sexual intercourse with her. It is stated that thereafter, the Petitioner left the house, and when the husband of the prosecutrix returned in the evening, the prosecutrix narrated the

whole incident to him. On the basis of this incident, the instant FIR was registered.

- c) It is stated that after completion of investigation, chargesheet was filed against the Petitioner without his arrest. Pursuant to the same, the Ld. M.M. summoned the Petitioner who did not appear and sought for exemption. The Ld. M.M. rejected the request of the Petitioner and issued Non-Bailable Warrants (NBW) against the Petitioner for 26.02.2021.
- d) The Petitioner has now approached this Court by way of the instant application seeking bail in the event of arrest and seeking stay of the NBW issued by the Ld. M.M.

3. Mr. N. Hariharan, learned Senior Counsel for the Petitioner, has submitted that charge-sheet has been filed without arrest of the petitioner. He further states that proceedings under Section 82 Cr.P.C have not been initiated against the petitioner. He states that after charge-sheet was filed, apprehending arrest, at the time of his appearance before the Court, the petitioner filed an application under Section 438 Cr.P.C before the Trial Court. He states that the Trial Court has dismissed the application primarily because the petitioner had not joined investigation on time. He states that once charge-sheet was filed and investigation was complete *qua* the petitioner, the Trial Court could not have dismissed the application of the petitioner for anticipatory bail primarily on the ground that the petitioner had not joined the investigation. His presence could have been ensured after rejecting his application for exemption from appearance or by issuing a bailable warrant.

4. Mr. Hariharan further submits that the prosecution story is false and

concocted. He has argued that the instant matter is a classic case of honey-trap and that the prosecutrix and her husband have been previously involved in a similar case. He has informed this Court that one Manish Tanwar had also been similarly trapped in this manner by the prosecutrix and her husband who only sought to extort money from their victims by lodging false complaints of sexual assault. He has informed this Court that in that matter, a hand-written complaint of rape against Manish Tanwar had been given to the police on 10.07.2020, but no FIR had been lodged.

5. The learned Senior Counsel has submitted that in Manish Tanwar's case, Rs. 50 lacs had been demanded from him by the prosecutrix and her husband for the matter to be settled. It has been stated that on settlement, the prosecutrix did not undergo medical examination and even gave in writing to the SHO, P.S. Kapashera that she was retracting her complaint regarding allegations of rape on the ground that she had filed the same in a fit of anger.

6. Mr. N. Hariharan has submitted that pursuant to an Order of this Court dated 23.09.2020 in Kapil Gupta v. State, (**BAIL APPLN. 2813/2020**), a Circular dated 10.11.2020 had been issued by the Commissioner of Police with regard to cases of honey-trap wherein it had directed Investigating Officers to take utmost care while investigating such cases without harassing the accused persons and to check the credentials of the Complainant(s), if any doubt regarding the veracity of their allegations arose. The learned Senior Counsel has argued that despite this Circular and despite the Petitioner having raised this issue before the Ld. Trial Court, the Ld. Trial Court dismissed the anticipatory bail application of the Petitioner herein. It has further been argued that the prosecutrix functioned in connivance with the Kapashera Police Station as no FIR was registered in pursuance of the

written complainant of the prosecutrix given to P.S. Kapashera even though the complaint disclosed the commission of a cognizable offence.

7. The learned Senior Counsel has submitted that a perusal of the CDR of all the parties involved discloses that the prosecutrix is resorting to false statements and is concocting the whole story, and that there are multiple contradictions in the statements of the prosecutrix. He has brought the attention of this Court to the fact that the FIR was not registered initially, and it was only after the Petitioner and his family did not pay the money demanded by the prosecutrix and her husband that the present FIR was registered. He has further submitted that the Petitioner has cooperated with the investigation and as chargesheet has already been filed, there exists no reason to arrest him at this juncture, and therefore, the NBWs issued against the Petitioner should be stayed. He further states that after this Court granted protection to the petitioner vide order dated 01.03.2021, the petitioner had been regularly appearing in all the hearings in the Court.

8. *Per contra*, Ms. Richa Kapoor, learned ASC for the State, has submitted that the Petitioner has joined the investigation and his mobile was also analyzed. However, the prosecutrix had failed to provide her mobile and stated that her mobile had been broken by the husband. She has submitted that the CDR reveals that both the parties would frequently talk to each other. The learned ASC has further stated that after completion of the investigation, the chargesheet was filed against the Petitioner without his arrest, and that it was only when the Petitioner failed to appear before the Ld. M.M. that NBWs were issued against him.

9. Ms. Kapoor has submitted that the Ld. Trial Court has already dismissed an application seeking anticipatory bail filed by the Petitioner

herein and that further investigation remains pending against another accused named by the prosecutrix, and that a supplementary chargesheet will be filed in due course. The learned ASC has stated that with regard to the averment that on an earlier occasion, the prosecutrix had made the same allegations against one Manish Tanwar, the same was true and that matter had been compromised between the two parties. The learned ASC has opposed the instant anticipatory bail application on the ground that investigation pertaining to a complaint wherein the Petitioner has allegedly threatened the prosecutrix is pending.

10. Furthermore, Ms. Kapoor has relied on Ramesh v. State through Dy. RFO, (Criminal Petition No. 9975/2021) of the Karnataka High Court to assert that once an accused has entered appearance before the Court and thereafter on account of his absence on a later date, a warrant has been issued by the said Court, then the remedy of anticipatory bail is not available to such a person.

11. Ms. Malvika Trivedi, learned Senior Counsel appearing for the Complainant, has also made her submissions and informed this Court that the prosecutrix was threatened by the son of the Petitioner and that a complaint was subsequently lodged by the prosecutrix dated 02.11.2020 at PS Moti Nagar *vide* DD No. 123. Subsequent complaints have also been given, however, no action was taken and this drove the prosecutrix to move an application before the Ld. M.M. calling for the status report. Ms. Trivedi has submitted that the story of the Petitioner that the instant matter is a case of honey-trap is false and it is only a means to discredit the prosecutrix and her allegations. The learned Senior Counsel has submitted that the life of the prosecutrix is in danger in view of the constant threats being levelled by the

Petitioner and his family.

12. Heard Mr. N. Hariharan, learned Senior Counsel for the Petitioner, Ms. Richa Kapoor, learned ASC for the State, Ms. Malvika Trivedi, learned Senior Counsel for the Complainant/prosecutrix, and perused the material on record.

13. At the outset, it would be pertinent to note that the Supreme Court has laid down guidelines pertaining to cases wherein chargesheet has been filed without the arrest of the accused. In Satender Kumar Antil v. Central Bureau of Investigation, (2021) 10 SCC 773, the Supreme Court has observed that if an accused has not been arrested during investigation and has cooperated throughout in the investigation, including appearing before the investigating officer whenever called, then certain guidelines must be adhered to while considering the grant of bail. The guidelines have been reproduced as under:

“3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

“Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

Requisite Conditions

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.
(No need to forward such an accused along with the charge-sheet Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676])

Category A

After filing of charge-sheet/complaint taking of cognizance

- (a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.
- (b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.
- (c) NBW on failure to appear despite issuance of bailable warrant.
- (d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.
- (e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc.” (emphasis supplied)

14. In the instant case, the Petitioner has been accused of offences under

Section 376/328 IPC, which entails a punishment that shall not be less than seven years, but may extend to imprisonment for life, and shall also be liable to fine. Therefore, as per the aforesaid judgement, for consideration of a bail application for an accused who falls under Category B, the accused must appear in court pursuant to process issued and the said bail application must be decided on merits. Further, the Supreme Court has also clarified that if during the course of investigation, there has been no cause to arrest the accused, merely because a chargesheet is filed, would not be an *ipso facto* cause to arrest the accused.

15. In light of the above, this Court directs the Ld. Trial Court to reconsider the matter pertaining to the issuance of impugned NBW in view of the fact that the chargesheet was filed without the arrest of the Petitioner herein. The case is coming up for hearing on 02.02.2022. Interim protection from arrest is granted to the petitioner till 02.02.2022.

16. During the proceedings, this Court was apprised of the fact that a similar complaint had been instituted by the prosecutrix/Complainant herein before P.S. Kapashera wherein she had levelled allegations of sexual assault against one Manish Tanwar. However, no FIR was registered in that case and that matter had been put to rest on the basis of a compromise which had been arrived at between the parties therein. This Court notes that non-registration of an FIR in the event that the commission of a cognizable offence is disclosed goes against the law laid down by the Supreme Court in Lalita Kumari v. Government of Uttar Pradesh and Ors. (2008) 7 SCC 164. Furthermore, it has been time and again held by the Supreme Court that cases involving the offence of rape cannot be settled on the basis of a compromise (See State of M.P. v. Madanlal, (2015) 7 SCC 681).

17. Furthermore, a perusal of the record indicates that the medical examination of the prosecutrix/Complainant in relation to FIR No. 668/2020 was conducted before the registration of the FIR but the MLC was conducted on the basis of DD Entry bearing No.4A. This raises the suspicion that the instant FIR had not been registered at the time it was alleged to have been registered. This adds weight to the submission of the learned Senior Counsel for the Petitioner that there has been possible manipulation of the instant FIR and the Police was attempting to settle the case. This Court, therefore, directs for a vigilance inquiry to be conducted by the Deputy Commissioner of Police, Vigilance, into:

- i. Why an FIR was not registered at P.S. Kapashera when the written complaint of the prosecutrix dated 10.07.2020 disclosed the commission of a cognizable offence and why was the matter allowed to be laid to rest on the basis of a compromise?
- ii. When the FIR was registered at 12:20 AM, why was the MLC registered only on the basis of DD number on the FIR and was the FIR ante timed because of negotiations in the Police Station?

18. The Deputy Commissioner of Police, Vigilance, Delhi Police, is directed to submit a report on the aforesaid queries within a period of two months from the date of this Order.

19. In view of the above discussions, the order dated 23.02.2021 is set aside and the learned Trial Court is directed to consider as to whether the custody of the petitioner is required post filing of the chargesheet in the light of the judgement passed by the Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation, (2021) 10 SCC 773.

20. With the above observations, this petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

JANUARY 31, 2022

Rahul

